



NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY

Air Quality Control/Operating Permit Program

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Joe Shirley, Jr.
President

Ben Shelly
Vice President

October 27, 2009

Norman Benally
P.O.Box 433
Kayenta, AZ 86033

Dear Mr. Benally:

The Navajo Nation Environmental Protection Agency ("NNEPA") would like to thank you for submitting your comment during the public comment period on the proposed air permit for Peabody Western Coal Company (PWCC) - Black Mesa Complex on August 14, 2009. Please find the NNEPA response to your comments below.

Coal Fire Mitigation Plan

The following discussion is presented in Peabody Western Coal Company's (PWCC) Coal Recovery and Protection Plan (Chapter 5) of SMCRA Permit AZ-0001D for the Black Mesa Complex (BMC).

Coal fires may occur in the mined cut, final highwall, adjacent spoil, and at coal handling facilities. It is in PWCC's best interest to control fires and prevent loss of the coal resource. Spoil and coal fires are suppressed and extinguished as soon as reasonably and safely possible. Burning coal in these areas will be extinguished under the supervision of a qualified and certified MSHA "Green Card" Surface Certified Supervisor in accordance with 30 CFR, 816.87, by removing and mixing the burning material with noncombustible material to the extent practicable or burial with at least four feet of noncombustible material, if appropriate. Water may be utilized to extinguish coal fires near coal handling facilities where the burning coal can be isolated. Fires, which occur in non-recoverable coal seams, which are exposed in the highwall, will be extinguished as described above if the seam is reachable by support equipment in the pit. If not reachable, the fire will be extinguished in the overburden removal process.

Within 48 hours of its discovery, PWCC shall commence efforts to extinguish any coal-related fire that could affect the amount of recoverable coal. If the fire is not extinguished within 96 hours after its discovery, PWCC shall notify the Bureau of Land Management (BLM) of that fact by telephone within that period. Within 48 hours of such telephone notice, PWCC shall submit to BLM a written report describing the extent of the fire, its exact location, the amount of recoverable coal affected, and any other relevant information.

PWCC Air Quality Monitors

Pursuant to 30 CFR 816.95, the Office of Surface Mining (OSM) requires PWCC to develop and implement a plan to control fugitive dust effectively. In addition, pursuant to 30 CFR 780.15(a)(1), OSM requires PWCC to conduct air-quality monitoring to evaluate the effectiveness of the fugitive-dust-control program. PWCC has operated an air-quality monitoring program since 1980 in accordance with Federal regulations. The monitoring network includes 12 particulate matter (PM10) samplers at 11 locations throughout the BMC. The PM10-monitoring network is operated in accordance with relevant USEPA requirements, including a quality assurance program, and was designed to monitor air-quality conditions on a micro-scale at the BMC to evaluate the effectiveness of the fugitive-dust-control program. Specifically, some monitors are located close to residences and unpaved roads used by local residents. Quarterly monitoring reports are prepared by PWCC and submitted to OSM and NNEPA to ensure compliance with air-quality requirements. The ambient PM10 concentrations monitored in the area of the BMC indicate that the public is not exposed to short-term (24-hour) or chronic (annual) concentrations (BMC Final EIS, November 2008).

When the public has a question regarding coal fires, they may contact PWCC directly or OSM. Appropriate points of contact are:

Mr. Gary Wendt, PWCC
Manager Environmental
Black Mesa Complex
(928) 677-5130
gwendt@peabodyenergy.com

Mr. Dennis Winterringer, OSM
Leader
Black Mesa Complex Team
(303) 293-5048
dwinterringer@osmre.gov

PWCC Title V Permit

The Black Mesa Complex (the "Complex") consists of two contiguous surface coal mines, the Black Mesa Mine and the Kayenta Mine; coal preparation and sampling facilities at the Black Mesa Mine; coal processing and overland conveyor systems at the Kayenta Mine; and various petroleum and other storage tanks. NNEPA views the Complex as a single source under the Clean Air Act. NNEPA is the Title V permitting authority .

Please review it and if you have any questions, call me at (928) 729-4247.

Sincerely



Charlene Nelson, Environmental Program Supervisor
Air Quality Control/Operating Permit Program
Navajo Nation Environmental Protection Agency



**NAVAJO NATION ENVIRONMENTAL PROTECTION
AGENCY**

**Navajo Nation Operating Permit Program
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Detailed Information

Permitting Authority: NNEPA

County: Navajo

State: Arizona

AFS Plant ID: 04-017-NAV01

Facility: PEABODY WESTERN COAL COMPANY – BLACK MESA COMPLEX

Document Type: RESPONSES TO COMMENTS

RESPONSES TO COMMENTS

**on the Part 71 Permit Renewal to Operate
Peabody Western Coal Company – Black Mesa Complex**

Permit No. NN-OP 08-010

On July 15, 2009, the Navajo Nation Environmental Protection Agency (NNEPA) had notices published in the Navajo Times, Gallup Independent, and Arizona Daily Sun, Arizona stating that Peabody Western Coal Company – Black Mesa Complex, located at 20 miles SSW of Kayenta, Arizona, had applied for a Part 71 Operating Permit renewal to operate a surface coal mining operation. The notice also stated that NNEPA proposed to issue a permit for this operation and provided information on how the public could review the proposed permit and other documentation. Finally, the notice informed interested parties that they would have thirty (30) days to provide comments on whether or not the permit should be issued as proposed.

On August 14, 2009, Mr. Norman Benally, a local resident of Kayenta, Arizona submitted a comment on the proposed Part 71 Operating Permit. Mr. Benally's comment is listed as Comment 1. On August 27, 2009, USEPA submitted comments on the proposed Part 71 Operating Permit. Their comments are listed as Comments 2 through 9. On August 13, 2009, Peabody Western Coal Company – Black Mesa Complex (referred to as "PWCC") submitted comments on the proposed Part 71 Operating Permit. Their comments are listed as Comments 10 through 50. This Response to Comment document provides responses to all of these comments. When permit language is included in the response, bolded language indicates additions to the permit and language with a line through it has been deleted from the permit.

Comments from Mr. Benally (Comment 1)

Comment 1:

Mr. Benally requested an informal hearing concerning the permit review for PWCC's air permit renewal. Mr. Benally has concerns on the coal fires in the open pit strip mines and at the open storage piles at PWCC. Mr. Benally mentioned that the air quality this summer has been very poor due to coal burning in the open pit strip mines. Mr. Benally also stated that the stench of "sulfur" from the burning coal in the mines and the haze that covers much of Black Mesa reduces visibility and is a serious public health concern.

Response to Comment 1:

PWCC has submitted a coal fire mitigation plan to NNEPA. In this plan, PWCC states that it is in PWCC's best interest to control fires and prevent loss of the coal resource at this site. According to the coal fire mitigation plan submitted, PWCC shall commence efforts to extinguish any coal related fire that could affect the amount of recoverable coal within 48 hours of its discovery. PWCC also operates an air-quality monitoring network throughout the Black Mesa Complex to ensure compliance with air-quality requirements. If the public has a question regarding coal fires, they may contact the following person at PWCC directly:

Mr. Gary Wendt, PWCC Manager Environmental
Black Mesa Complex
TEL: (928) 677-5130
E-mail: gwendt@peabodyenergy.com

or

Mr. Dennis Winterringer, Office of Surface Mining Leader
Black Mesa Complex Team
TEL: (303) 293-5048
E-mail: dwinterringer@osmre.gov

In addition, NNEPA has sent a letter to Mr. Benally to response his comments directly on October 27, 2009.

Comments from USEPA (Comments 2 through 9)

Comment 2:

USEPA agrees with the requirement to conduct weekly visible emission surveys in condition II.C.1. However this condition, unlike the corresponding condition in the initial permit issued by USEPA Region 9, does not contain any language that would trigger a Method 9 observation under certain conditions. The initial Title V permit required PWCC to conduct an opacity test using EPA Method 9 within 24 hours if an

instantaneous opacity reading of 10% or greater was detected. This approach was used to reduce the frequency of required Method 9 observations while still providing a useful gatekeeper to determine whether additional monitoring is warranted. USEPA requests to revise Condition II.C.1 to require a Method 9 observation if an instantaneous opacity reading of 10% or greater is detected.

Response to Comment 2:

NNEPA has revised Condition II.C.1 as follows to require a Method 9 observation if an instantaneous opacity reading of 10% or greater is detected. In addition, NNEPA has added a sentence to this condition to specify that emission survey is not required for the emission unit which is not operating at the time the observer arrives. The corresponding discussions in Sections e. and 4.a in the Statement of Basis (SoB) have been revised also.

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

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; at N-8, the tail end of Belt #18 from the high sulfur stockpile K-3. 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.**

...

Comment 3:

USEPA disagrees with the PM-10 and PM potential to emit (“PTE”) that presents on page 12 of the SoB. USEPA stated that controlled emission factors from AP-42 were used to calculate PWCC’s PTE of these pollutants. However, since the permit does not contain any enforceable requirements for PWCC to maintain and operate its particulate control devices, NNEPA cannot rely on controlled emission factors for the purpose of calculating PM-10 and PM PTE. Therefore, USEPA notes that the PM-10 and PM PTE presented in the statement of basis are only estimates of the facility’s worst case actual emissions, assuming use of the particulate control devices, but does not imply that PWCC

has an enforceable PTE limit. Absent stringent monitoring and testing conditions for the crushers, screens, conveyors, and other processing equipment, as well as conditions requiring the maintenance and operation of the sprayers, the PTE calculation is not enforceable as a practical matter. USEPA states that NNEPA should either recalculate the PTE based on uncontrolled emissions, or use another term instead of PTE, e.g., “emissions estimate.”

Response to Comment 3:

NNEPA has recalculated the PTE of PM and PM-10 of this source using the uncontrolled emission factors in AP-42. The revised emission calculation spreadsheet is attached to the revised SoB. The PTE numbers listed in the table in Section I. of the SoB have been revised according to the revised PTE calculations.

Comment 4:

USEPA states that Condition III.A.1 should be deleted. This condition requires the submittal of a source test plan 30 days prior to every source test. At this time the only emission limit PWCC is subject to is a 20% opacity limit. USEPA does not expect PWCC to submit source test plans for Method 9 opacity testing.

Response to Comment 4:

NNEPA agrees that the general testing requirements is not applicable to this source and Condition III.A has been deleted from the permit entirely. The conditions under Condition III have been renumbered accordingly. However, the permittee is still responsible for complying with the monitoring and the associate recordkeeping requirements to ensure compliance with the permit limits as stated in 40 CFR 71.6(a)(3)(i)(B). The reference to 40 CFR 71.6(a)(3)(i)(B) has been added to the heading of Condition III.A - Recordkeeping Requirements.

Comment 5:

USEPA states that the semi-annual monitoring reporting condition (now Condition III.B.1) has an obsolete reference to a due date that has passed. USEPA requests to delete the provision that states “except that the first reporting period shall cover the period from the effective date of this Part 71 permit through December 31, 2008.”

Response to Comment 5:

Condition III.B.1 has been corrected as follows as requested:

III.B. Reporting Requirements [40 CFR § 71.6(a)(3)(iii)] [NNEPA § 302(G)]

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, except that the first reporting period shall cover the period from the effective date of this Part 71 permit through December 31, 2008. 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.

...

Comment 6:

USEPA requested Condition III.H.2 (now Condition III.G.2.) be removed. This condition grants a permit shield for 40 CFR 60, Subpart Kb (the New Source Performance Standard for Volatile Organic Liquid Storage Vessels). The language in this condition is from initial Title V permit issued to this source, and is appropriate permit shield language when a source is subject to an applicable requirement, and that requirement has been incorporated into the permit. However, since PWCC is no longer subject to any Subpart Kb requirements, as explained in the SoB, Condition III.H.2 (now Condition III.G.2) is no longer unnecessary.

Response to Comment 6:

Since the permittee is no longer subject to NSPS, Subpart Kb, NNEPA has removed the requirements in Condition III.H.2 from the revised permit.

Comment 7:

USEPA states that NNEPA should not refer to the coal preparation plant as a “support facility” in the SoB. USEPA states that a “support facility” is normally an industrial source that is adjacent or contiguous to a primary stationary source; has a different SIC code than the primary source; and conveys, stores, or otherwise assists in the production of the principal product. As the mine and the coal preparation facility have the same owner and same two digits SIC code, they are considered one stationary source; therefore, the support facility issue never arises.

Response to Comment 7:

For clarification purposes, Section 1.c. of the SoB has been revised as follows to avoid future confusions:

c. Description of Operations, Products

The Black Mesa Complex (the “Complex”) consists of two contiguous surface coal mines, the Black Mesa Mine and the Kayenta Mine; coal preparation and sampling facilities at the Black Mesa Mine; coal processing and overland conveyor systems

at the Kayenta Mine; and various petroleum and other storage tanks. NNEPA views the Complex as a single source under the Clean Air Act. ~~Surface coal mining is the primary activity of the source, and the coal preparation plant serves as a support facility for the two mines.~~

Comment 8:

USEPA stated that the discussion of the 2004 permit reopening in the SoB incorrectly states that “The source also requested that USEPA include conditions in the permit to limit the potential to emit (PTE) of PM-10.” This issue was raised by PWCC prior to issuance of the final initial permit, and subsequently in the petition PWCC filed with the Environmental Appeals Board. However, PWCC did not pursue the inclusion of PTE limits as part of the reopening, or subsequently apply for a permit revision to address this issue. Therefore, NNEPA should delete this sentence.

Response to Comment 8:

As the result of this comment, the last paragraph in Section 1.d. of the SoB has been revised as follows:

d. History

...

The initial Title V permit for this source was issued by USEPA on September 23, 2003. The Title V permit was reopened under 40 CFR 71.7(f) on October 23, 2003, when the source claimed that it could not comply with all the terms and conditions in the final permit. These conditions included the ability to comply with Method 9 observations, visible emission notations, and water spray inspections at various emission units. ~~The source also requested that USEPA include conditions in the permit to limit the potential to emit (PTE) of PM-10.~~ EPA reopened the permit to evaluate Peabody Western Coal Company’s claims, and the permit was finalized on June 1, 2004. This Title V, Part 71, renewal permit application was submitted on October 29, 2008.

Comment 9:

USEPA stated that the periodic monitoring discussion on pages 3-5 of the SoB (now page 4) is helpful, but could be improved by a more detailed evaluation of PWCC’s proposal. For example, USEPA agreed with the proposals to change the water spray and water meter inspection frequencies from weekly to monthly. USEPA also agreed that the frequency of visible emissions surveys could be decreased based on an analysis PWCC’s compliance data during the initial permit term. However, while PWCC proposed to delete the survey requirement from the permit entirely, USEPA believes that this monitoring requirement should be retained, albeit with a frequency of weekly instead of the daily surveys currently required. Finally, PWCC’s proposal to conduct Method 9

testing once per permit term would not assure compliance with the opacity limit or provide data for annual compliance certifications. USEPA would agree that Method 9 testing frequency can be decreased from monthly to quarterly.

Response to Comment 9:

The discussion on page 3 of the SoB has been revised to include the detailed evaluation of PWCC's proposal as stated in Comment 9.

Comments from PWCC (Comments 10 through 50)

Comment 10:

PWCC has comments on the scope of NSPS Subpart Y Applicability. PWCC stated that 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, PWCC has Subpart Y affected facilities that consist of "coal processing and conveying equipment." However, PWCC 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" as defined in 40 CFR 60.250(a).

In NSPS, Subpart Y, "coal processing equipment" is defined in 40 CFR 60.251(g) as "any machinery used to reduce the size of coal or to separate coal from refuse." In addition, "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.

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 PWCC.

Response to Comment 10:

NNEPA has revised the table for the affected facilities subject to NSPS, Subpart Y in Condition II.B and in Section 4.a of the SoB to remove the units which were constructed prior to October 24, 1974 or do not meet the definition of "conveying equipment" in 40 CFR 60.251(g) as the result of this comment.

Comment 11:

PWCC stated that numerous facilities at this source have never been subject to new source review or any other form of permitting under the Clean Air Act. Moreover, those same facilities 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 PWCC's initial 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 this source, and in accordance with 40 CFR 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 this source 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.

Response to Comment 11:

NNEPA acknowledges that some of the existing facilities at PWCC were constructed prior to October 24, 1974 and currently have no applicable requirements. These units might be modified or replaced in the future and therefore, subject to the applicable requirements under CAA then. All the NSPS, Subpart Y affected facilities are identified in Table 1 under Condition II and the reasons why other coal handling facilities are not subject to NSPS, Subpart Y are documented in Section 4.a of the SoB. NNEPA does not believe it is necessary to identify the units constructed prior to October 24, 1974 specifically in the emission unit description table under Condition I or to list these units

in the permit shield condition (now Condition III.G). In addition, a permit shield cannot be granted without public notice. Therefore, no change has been made as a result of this comment.

Comment 12:

PWCC requests that all references to provisions in the Navajo Nation Operating Permit Regulations (NNOPR), other than NNOPR Subpart VI, be deleted from the Part 71 renewal permit for the Black Mesa Complex. PWCC claims that there is neither federal authority nor tribal authority to apply the NNOPR requirements to the Part 71 permit.

Response to Comment 12:

NNEPA finds that both of this comment is incorrect and so is declining to revise the permit documents to delete references to the NNOPR, with limited exceptions, as explained below.

1. Federal Authority

PWCC comments that, “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.” In fact, 40 C.F.R. § 71.10(a) requires that “In order to be delegated authority to administer a part 71 program, . . . the laws of the . . . Indian tribe [must] provide adequate authority to carry out all aspects of the delegated program.” Thus, there is not only federal authority but there is a federal requirement for tribes to have their own authorities to administer the Part 71 program, including authorities for permit processing, monitoring and reporting, and permit enforcement. In the case of the Navajo Nation, these authorities are found generally in the Navajo Nation Clean Air Act and specifically in the NNOPR. Moreover, EPA’s Eligibility Determination approving the Part 71 delegation recognizes that:

[t]he Navajo Nation has enacted laws providing all relevant authorities to enable the Tribe to carry out the administration of the federal program. . . . In addition, . . . the Tribe has enacted the Navajo Nation Air Pollution Prevention and Control Act and the Navajo Nation Air Quality Control Operating Permit Regulations; they contain all relevant authorities and procedures for administration of the federal program. In particular, the Tribal statute and regulations establish administrative authorities and procedures for the receipt, processing, and issuance or denial of permit applications, the collection of permitting fees, and the pursuit of various enforcement-related activities including development of compliance plans and schedules of compliance, monitoring, inspections, audits, requests for information, issuance of notices, findings and letters of violation, and development of cases up until filing of a complaint or order.

Eligibility Determination at 16 (dated October 13, 2004) (attached to Delegation Agreement).

In addition, the Delegation Agreement provides specifically in § IX(2) that “NNEPA agrees to continue to revise, reopen, terminate or revoke and reissue Part 71 permits [that is, to perform all permit processing activities], as necessary and appropriate, using the procedures of Subpart IV of the Navajo Nation Operating Permits Regulation [the Navajo permit processing regulations].” See also Delegation Agreement §§ I(4) (NNEPA agrees to process confidentiality claims); IV(1) (citing NNOPR § 401(B)); IV(2) (citing NNOPR generally); V(4) (same). The Delegation Agreement also states in § VI(1) that NNEPA agrees to conduct “a. development of compliance plans and schedules of compliance; b. compliance and monitoring activities, . . . c. enforcement-related activities,” and states in § VI(2) that “[t]his Agreement does not preclude NNEPA from pursuing administrative and judicial enforcement actions under its independent authorities.” Moreover, the Delegation Agreement § VII(2) requires all Part 71 sources to submit “all reports, compliance certifications, and other submittals required by Part 71 and the Part 71 permits to both EPA and NNEPA.”

The Delegation Agreement also incorporates by reference NNEPA’s transition plan for administering the Part 71 program, stating in § IV(5) that “NNEPA agrees to follow its transition plan for permit issuance, provided for in Attachment ‘2’ of this agreement.” The transition plan specifically states that NNEPA “will process permit applications pursuant to . . . subpart IV of the NNOPR.” Att. 2 at 6, § V.C. See also Att. 2 at 8, § V.E (same); id. at V.G. (enforcement will take place pursuant to NNOPR Subpart V).

2. Tribal Authority

PWCC also states that “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.” On the contrary, NNOPR Subpart VII specifically addresses “Part 71 Program Delegation” and provides the authority not only for NNEPA to collect fees (§ 702) but also more generally in § 701 for NNEPA “to issue, amend, revoke, reissue, modify, enforce and renew Part 71 permits to Part H sources pursuant to the procedures set forth both in these regulations and 40 C.F.R. part 71.” NNOPR § 705 lists specific NNOPR provisions that apply to Part 71 permits. See also NNOPR § 704(B) (“the Navajo Nation procedures set forth in the sections listed under § 705 shall apply to part 71 permits in addition to the part 71 procedures.”).

For these reasons, NNEPA has referred to various provisions of the NNOPR in all the Part 71 permits it has processed, not just in the permit for PWCC. Therefore, no change has been made as the result of this comment.

Comment 13:

Section 1.j of the draft SoB 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.

Response to Comment 13:

NNEPA disagrees that the submittal was timely, but acknowledges that there was sufficient confusion about the issue such that it has no plans to take any enforcement or other action regarding it.

Section 1.j of the SoB states: “The Title V permit renewal applicat[i]on was not received within six (6) to eighteen (18) months before the expiration date of the first Title V permit. NNEPA is reviewing this matter and is taking appropriate action.” EPA issued the initial Title V permit for the Black Mesa Complex on September 23, 2003. 40 CFR 71.6(a)(11)(ii) requires a Part 71 permit to expire five years from “the date of issuance.” Consequently, the permit expired on September 22, 2008. PWCC’s arguments regarding the permit expiration date calculate the term from the effective date of the permit rather than from its issuance date, which is contrary to the regulations.

Moreover, 40 CFR 71.7(f)(2) provides that proceedings to reopen a permit for cause “shall affect only those parts of the permit for which cause to reopen exists.” When USEPA reopened the permit, it did so only to revise Section II.C of the permit, which pertains to opacity monitoring and testing requirements and water sprays. See, e.g., Letter from Gerardo Rios, EPA, to Brian Dunfee, PWCC, dated April 13, 2004. USEPA stated at the time that Section II.C “is the only section of the permit affected by this reopening.” *Id.* Therefore, this reopening did not affect the issuance date or even the overall effective date of the permit.

NNEPA acknowledges, however, that there was understandable confusion regarding the expiration date of the initial Title V permit, due to the permit reopening and other factors discussed by PWCC, including the February 13, 2007 letter that NNEPA sent to PWCC, which was unclear as to the expiration date of the permit. Indeed, EPA’s Environmental Appeals Board itself seemed unclear on the subject, stating in its February 18, 2005 decision on the permit that the permit was issued on September 23, 2003 (Decision at 5), and then stating two sentences later that the “final” permit was issued on May 21, 2004 (*id.*). NNEPA therefore is not taking any action regarding the timeliness of PWCC’s submittal of the permit renewal application, and is deleting from the statement of basis any reference to the timeliness of filing. Notice to the public is provided by this response to comments and by the revision to the statement of basis.

Comment 14:

Cover Letter of the Draft Permit - PWCC stated that 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, PWCC requested the following phrases 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 . . .”; and
- 2nd ¶: “. . . , as applicable”.

In addition, 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.

Response to Comment 14:

No change has been made as the result of this comment. See the response to Comments 12 and 13.

Comment 15:

Condition I - PWCC has the following comments for Condition I:

- (a) The asterisk affixed to the “Maximum Capacity” of several units needs its corresponding explanation at the end of the table of Significant Emission Units.
- (b) 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.
- (c) 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.”
- (d) 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.

Response to Comment 15:

The explanation of the asterisk mark in the table under Condition I was included in the end of the table on page 8 of the permit. The asterisk mark means that the maximum capacity of certain unit is limited to the listed value by an up- or downstream process or unit. NNEPA agreed to replace the description of "coal processing areas" with "coal preparation areas and has corrected the construction date for Belt #3A.

However, NNEPA does not believe it is necessary to specifically identify the grandfathered units which were constructed before October 24, 1974 (see the response to Comment 11). NNEPA has added a note to the end of the unit description table in Condition I to state that all the information listed in this table is descriptive information and is not enforceable.

Comment 16:

Condition 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, PWCC questions 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.

Response to Comment 16:

The purpose of the Clean Air Act Title V operating permit program is to provide for a single permit for a source that contains all the CAA requirements applicable to that source, and to make those requirements enforceable through the permit. Therefore, although NNEPA does not have its own NSPS program, NSPS requirements are incorporated into the Title V permit that NNEPA has the delegated authority and responsibility to administer, and NNEPA requires the notification provided for in Permit Condition II.A.8 to be able to fulfill its responsibility under the Delegation Agreement. In addition, the use of electronic notification is not acceptable for NNEPA. Therefore, no change has been made as the result of this comment.

Comment 17:

Condition II.B - PWCC has the following comments for the NSPS, Subpart Y affected units listed in Table 1:

- (a) The title of the table in this condition 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 requested that those activities be identified consistently with the conventional terminology, i.e., as "Affected Facilities."

- (b) As explained in Comment 15(c), PWCC requested the subject areas identified in the table be designated as “coal preparation areas” and not as “coal processing areas.”
- (c) For the J-28 area, the second belt should be labeled “Belt #1-S”.
- (d) For the N-11 area, “Belts #34-26” should be “Belts #34-36”.
- (e) 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, and #30. Therefore, please remove those conveyors from this list of Affected Facilities.
- (f) 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, PWCC requests to remove the following conveyors from the list of Affected Facilities”: Belts #11, #12, #15, #16, and #18. PWCC also requests to change the corresponding Description to “Two (2) Conveyors”.
- (g) 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,” PWCC requested to delete OCTP20 from the list of Affected Facilities as well. 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.
- (h) For the Black Mesa Preparation Plant, a number of those pollutant-emitting activities were constructed prior to October 24, 1974. PWCC requests to 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.
- (i) In the first line of the sentence following Table 1, PWCC requests to replace the words “the emission units” with “each affected facility”. PWCC also requests to add the word “in” after the word “above”.

Response to Comment 17:

NNEPA has revised the information listed in Table 1 as requested in Comment 17. The first sentence following Table 1 in Condition II.B has also been revised as requested.

Comment 18:

Conditions II.C.1 and II.C.2 - PWCC stated that Belt #18 is not subject to Subpart Y (see Comment 17(f)) and requests to delete the phrase of “the tail end of Belt 18 from high sulfur stockpile K-3” in these conditions.

Response to Comment 18:

The phrase of “at N-8, the tail end of Belt 18 from high sulfur stockpile K-3” in Conditions II.C.1 and II.C.2 has been removed as requested.

Comment 19:

Condition III.A - PWCC stated that testing is not required for any pollutant-emitting activity at Black Mesa Complex. PWCC stated that this condition is irrelevant and should be deleted from the Title V permit.

Response to Comment 19:

Condition III.A has been deleted from the final permit. See the response to Comment 4.

Comment 20:

Condition III.B (now Condition III.A) - PWCC stated that all of the monitoring requirements of the permit (II.C) and all of the recordkeeping requirements of the permit (II.D) are unit-specific. PWCC stated that Condition III.B (now Condition III.A) is a generic condition that is irrelevant and should be deleted from the Title V permit.

Response to Comment 20:

The recordkeeping language in this condition is taken directly from Part 71, and is a standard permit content requirement for all Part 71 permits issued by EPA or NNEPA. Therefore, no change has been made as a result of this comment.

Comment 21:

Condition III.C (now Condition III.B) - PWCC requests to delete the reference to “NNOPR § 302(G)” in the title of this condition.

Response to Comment 21:

No change has been made as the result of this comment. See the response to Comment 12.

Comment 22:

Condition III.C.1 (now Condition III.B.1) - PWCC stated that the date “December 31, 2008” must be revised to be consistent with the eventual effective date of the renewed permit.

Response to Comment 22:

The reference date in this condition has been revised. See the response to Comment 5.

Comment 23:

Condition III.C.1.a.v (now Condition III.B.1.a.v) - PWCC stated that the CAM requirements do not apply to any emission units at Black Mesa Complex. Therefore, the phrase “and including exceedances as defined under 40 CFR § 64.1” should be deleted.

Response to Comment 23:

This condition has been revised as requested.

Comment 24:

Condition III.C.1.a.vii (now Condition III.B.1.a.vii) - PWCC seeks clarification of the meaning of the words “the total time when such monitoring was not performed.” PWCC asked if this means that time of non-performance measured against the total time that monitoring should have occurred to satisfy the periodic monitoring requirement?

Response to Comment 24:

NNEPA agrees with the interpretation that the permittee made on the requirements of this condition.

Comment 25:

Condition III.C.1.b (now Condition III.B.1.b) - PWCC stated that there are no other reports required of Black Mesa Complex that satisfy the criteria of this section. PWCC stated that this provision should be deleted entirely.

Response to Comment 25:

The reporting requirement is also a standard permit content requirement for all Part 71 permits issued by EPA or NNEPA. Although the language itself does not come directly from the regulation, EPA developed this language in order to clarify the semiannual monitoring report requirements for title V sources. No change has been made as a result of this comment.

Comment 26:

Condition III.C.1.c.iv (now Condition III.B.1.c.iv) - PWCC states that the CAM requirements of Part 64 do not apply to Black Mesa Complex. PWCC states that this provision should be deleted entirely.

Response to Comment 26:

This condition has been removed as requested.

Comment 27:

Condition III.C.2.b.i (now Condition III.B.2.b.i) - PWCC states that this provision should be deleted entirely because there are no permit terms for emissions of hazardous air pollutants from this source.

Response to Comment 27:

NNEPA agrees to remove the requirements in Condition III.C.2.b.i since there are no HAP limits included in this permit. The requirements in Condition III.B.2.b have been renumbered accordingly.

Comment 28:

Condition 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.

Response to Comment 28:

No permit shield shall be granted without public notice. NNEPA cannot add any content to the permit shield condition after the public notice period. In addition, the rule applicability for each unit at PWCC was discussed in the SoB and is not necessary to include the proposed statements in the permit shield condition.

Comment 29:

Condition IV.B.2 - PWCC stated that 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.” PWCC stated that this condition’s requirement that “other credible evidence . . . *must* be considered” should be modified by adding the words, “if available.”

Response to Comment 29:

Condition IV.B.2 has been revised as requested.

Comment 30:

Condition IV.C - PWCC requests to delete reference to “NNOPR § 302(I)” in the title of this condition.

Response to Comment 30:

No change has been made as the result of this comment. See the response to Comment 12.

Comment 31:

Condition IV.C.1 - PWCC stated that the dates in this condition should be revised to be consistent with the eventual effective date of the renewed permit.

Response to Comment 31:

PWCC is already required to submit annual compliance certification under the current Title V permit. The renewal permit does not include additional requirements. Therefore, there is no need to specify the effective date of the renewed permit in Condition IV.C.1. No change has been made as the result of this comment.

Comment 32:

Condition IV.C.2 - PWCC stated that this condition must be deleted because there is no permit issued under NNOPR to which this requirement applies.

Response to Comment 32:

No change has been made as the result of this comment. See the response to Comment 12.

Comment 33:

Condition IV.D - PWCC requests to delete the reference to “NNOPR § 301(E)” in the title of Condition IV.D because there is no permit issued under NNOPR to which that cited regulation applies.

Response to Comment 33:

No change has been made as the result of this comment. See the response to Comment 12.

Comment 34:

Condition 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 USEPA.

Response to Comment 34:

NNEPA agrees with PWCC’s comment regarding the submittal of information that is claimed to be confidential, and has revised Condition IV.D as follows:

IV.D. Duty to Provide and Supplement Information [40 CFR §§ 71.6(a)(6)(v), 71.5(b)]
[NNOPR § 301(E)]

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.

Comment 35:

Condition IV.E - PWCC has the following comments on the title of this condition:

- (a) 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.
- (b) 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.
- (c) 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.

Response to Comment 35:

NNEPA does not agree to remove the citations of “NNOPR Subpart VI” and NNOPR “Section 702” in the title of Condition IV.E. See the response to Comment 12 for details. NNEPA agrees to delete the reference to NNOPR § 703 in the Title for Condition IV.E in the revised permit.

Comment 36:

Conditions IV.G, IV.H, IV.I, IV.K, IV.L, and IV.Q - PWCC stated that 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 the permittee is not required to have, and does not have, at this time. PWCC requests to delete the following citations respectively: “NNOPR § 406”, “NNOPR § 405(C)”, “NNOPR § 405(D)”, “NNOPR § 405(E)”, “NNOPR § 406” and “NNOPR § 404(B)” from these conditions.

Response to Comment 36:

No change has been made as the result of this comment. See the response to Comment 12.

Comment 37:

Condition IV.R.1.a - PWCC requests to delete this condition because this provision is not applicable to Black Mesa Complex.

Response to Comment 37:

NNEPA agrees that the language in Condition IV.R.1.a is confusing and should be corrected as follows:

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) and (ii), and 71.8(d)]

1. This permit shall expire upon the earlier occurrence 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

...

Comment 38:

Condition IV.R.1.b - PWCC states the 5-year duration of a Title V permit must be measured relative to its effective date and not to its issuance date.

Response to Comment 38:

40 CFR 71.6(a)(11)(ii) requires a Part 71 permit to expire five years from “the date of issuance.” Therefore, no change has been made as result of this comment.

Comment 39:

Condition IV.R.3 - PWCC requests to change the word “may” to “shall” in the last line of this condition. 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.

Response to Comment 39:

Condition IV.R.3 has been revised as requested.

Comment 40:

Section 1.d of the SoB - On August 7, 2009 PWCC wrote to NNEPA, taking exception with an allegation at section 1.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. PWCC incorporates that letter into these comments by reference.

PWCC requested to revise the discussion in the last paragraph of Section I.d of the SoB 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. (also see comments 41 and 43)

Response to Comment 40:

No change has been made as the result of this comment. See the response to Comment 13 for details.

Comment 41:

Section 1.e of the SoB - PWCC has the following comments on Section 1.e of the SoB:

- (a) As explained in the discussion in Comment 40, 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.

- (b) 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.
- (c) At the bottom of page 3 of the SoB, PWCC requests to revise the discussion of “Monitoring and Testing Requirements” 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.

Response to Comment 41:

NNEPA declines to make requested revisions in Comments 41(a) and (b). See the response to Comment 13 for details. The coal storage systems and transfer and loading systems were constructed prior to the applicability date of NSPS, Subpart Y. Therefore, NNEPA has made the requested changes in Comment 41(c) in the SoB.

Comment 42:

Section 1.f of the SoB - 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.

In addition, PWCC 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.”

Response to Comment 42:

NNEPA has added a note to the unit description table to state that all the information listed in the table of Section 1.f is descriptive information and is not enforceable. NNEPA

does not believe it is necessary to specifically identify the units which are considered grandfather units under NSPS, Subpart Y in this table. In addition, the information listed in the unit description table has been revised due to the changes made in the response to Comment 15.

NNEPA has revised the title of Section 1.f of the SoB to be "Significant Emission Units", in order to be consistent with the information listed in Condition I of the permit.

Comment 43:

Section 1.j of the SoB - 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. PWCC incorporates the letter dated August 7, 2009 to Ms. Charlene Nelson at NNEPA in these comments by reference.

Response to Comment 43:

Section 1.j of the SoB has been revised in the response to Comment 13. See the response to Comment 13 for details.

Comment 44:

Section 1.1 of the SoB - PWCC has the following comments on this section of the SoB:

- (a) PWCC states that 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.
- (b) 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.
- (c) 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.

- (d) 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.”

Response to Comment 44:

NNEPA has revised the PTE definition in Section 1. of the SoB to match the PTE definition listed in 40 CFR 70.2. NNEPA agreed to remove the statement of "actual emissions are typically lower than PTE".

NNEPA prefers to keep the PTE of PM information in the SoB. SoBs are used in part to document the applicability or nonapplicability of a variety of CAA requirements, including NSPS, NESHAP, PSD, etc. The SoB is a description of the source that provides the basis for making applicability determinations for other CAA requirements, including PSD. PM is a "regulated NSR pollutant" as that term is defined in EPA's PSD regulations at 40 CFR 52.21. Therefore, NNEPA believes that the SoB should provide an estimate of what the PM emissions are, to ensure all applicability determinations are correct. In addition, at the last row of the PTE table, it is clear that the PTE of PM is not used to determine the major source status under Part 71 program.

NNEPA has added a note under the PTE table in Section 1.1. of the SoB to clarify that the total PTE of this source is based upon all stack and fugitive emissions from coal preparation activities plus any stack emissions from surface mining activities as suggested in Comment 44(d). Fugitive emissions from the storage piles and dozing operations have been removed from the PTE summary table. The footnote related to fugitive emissions from the wind erosion has been deleted from the SoB.

Comment 45:

Section 1.m of the SoB - PWCC has the following comments on this section of the SoB:

- (a) PWCC stated that PM is not a regulated pollutant for purposes of Title V and there was no reason to report actual emissions of PM. PWCC requests that the table of actual emissions delete any reference to PM.
- (b) 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.

Response to Comment 45:

NNEPA agreed to remove the reference to the actual PM emission information from the table listed under Section 1.m of the SoB. In addition, the parenthetical note under the table has been removed as requested.

Comment 46:

Section 3 of the SoB - Since 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, PWCC states that 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, PWCC stated that 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 SoB.

Response to Comment 46:

A Part 71 permit shall include all the applicable requirements under CAA. PSD is one of the programs under CAA. NNEPA believes that it is necessary to include PSD applicability discussions in the SoB. NNEPA has revised the discussions in Section 3 of the SoB to streamline the history discussion and to clarify the statements relating to the fugitive emissions.

Comment 47:

Section 4.a of the SoB - PWCC has the following comments on Section 4.a of the SoB:

- (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.
- (b) 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.”
- (c) 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”.

Response to Comment 47:

NNEPA has revised the discussion under Section 4.a in the SoB to clarify that the existing coal storage system or coal transfer and loading system at this are not subject to NSPS, Subpart Y since these units were either constructed prior to the applicability date of this NSPS or do not meet the Subpart Y definition of "conveying equipment" (see response to Comment 17). NNEPA has revised the table and discussion in Section 4.a of the SoB to use the term of "affected facilities", instead of "affected units". The table for the affected facilities also been revised as requested (refer to response to Comment 17).

Comment 48:

PWCC stated that 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.

Response to Comment 48:

A Part 71 permit program is considered delegated in “whole,” in contrast to “in part,” when it covers all sources within a particular jurisdiction and consists of the entire delegable program, even though certain authorities may not be delegated pursuant to 40 C.F.R. § 71.10(j). *See, e.g.*, 40 C.F.R. § 71.10(a) (“The Administrator may delegate, *in whole* or in part”) (emphasis added); *see also* § 71.9(c)(2) (“For part 71 programs that are fully delegated”). Thus, NNEPA will not revise this aspect of § 7, but has corrected the date and clarified its applicability to PWCC, so that the section will read as follows: “Authority to administer the Part 71 Permit Program was delegated to the Navajo Nation EPA by USEPA Region 9 in part (including for the Black Mesa Complex) on October 15, 2004, and in whole on March 21, 2006.”

Comment 49:

PWCC requested the following corrections to the permit:

- (a) 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)

- (b) Condition II.A. 1st sentence - After the words “. . . maintenance, and testing”, add the word “of”.
- (c) Condition II.A.3 - “40 CFR § 2” should be “40 CFR Part 2”.
- (d) Conditions II.A.5, 6 and 7 - “40 CFR § 60” should be “40 CFR Part 60”.
- (e) Condition 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.
- (f) Condition III.B.3 (now Condition III.A.3) - “40 CFR § 60” should be “40 CFR Part 60”.
- (g) Condition III.D title (now Condition III.C)- “40 CFR § 82” should be “40 CFR Part 82”.
- (h) Conditions III.D.1, 2, 3, 4 & 5 (now Condition III.C) - “40 CFR § 82” should be “40 CFR Part 82”.
- (i) Condition III.E title & last sentence (now Condition III.D) - “40 CFR §61” should be “40 CFR Part 61.”
- (j) Condition III.G title (now Condition III.F) - “40 CFR § 68” should be “40 CFR Part 68”.
- (k) Condition 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.”

Response to Comment 49:

NNEPA has made all the changes requested in Comment 49 to the permit.

Comment 50:

PWCC requested the following corrections to the SoB:

- (a) Section 1.d - In this section and elsewhere, replace the words “Peabody Energy” with “Peabody Western Coal Company.”
- (b) Section 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.

- (c) Section 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.”
- (d) Section 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”.
- (e) Section 1.f - On page 6, the “Unit Description” for Belt #36 should be “One (1) conveyor from the screen to transfer point.”
- (f) Section 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.
- (g) Section 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.

- (h) Section 1.j - In the second paragraph, correct the spelling for “application”.
- (i) Section 4.a - In the table’s entries of affected facilities for area J-28, “Belt #1-8” should be “Belt #1-S”.
- (j) Section 4.a - In the table’s entries of affected facilities for area N-11, “Belts #34-26” should be “Belts #34-36”.

Response to Comment 50:

NNEPA has agreed to make all the changes requested in Comment 50 to the SoB, except for the changes requested in Comment 50(c). NNEPA believes "opacity observations" are equivalent to "VE surveys." It is redundant to make the changes as requested in Comment 50(c). In addition, the discussions in the last paragraph on page 4 have also been revised as the result of Comment 2.