

**PART 71 FEDERAL OPERATING PERMIT
STATEMENT OF BASIS**

**Peabody Western Coal Company
Black Mesa Complex
Permit No. NN-OP 99-07**

1. Facility Information

a. Permittee

Peabody Western Coal Company (PWCC)
P.O. Box 650
Kayenta, AZ 86033

b. Facility location

The Black Mesa Complex is located 19 miles west of Kayenta, AZ on the reservations of the Navajo Nation and the Hopi Tribe.

c. Facility contact/ Responsible Official

Facility Contact: Brian Dunfee, (928) 677-3201
Responsible Official: John Wasik, (928) 677-3201

d. Description of operations, products

The facility consists of two contiguous surface-coal mines.

e. Permitting and/or construction history

The Black Mesa Mine began operations in 1970, followed by the Kayenta Mine in 1973. No air quality permits have ever been issued to the facility since, at the time of its initial construction, EPA did not have construction permit regulations in place. Although this facility has been grandfathered from New Source Review construction permitting, future modifications could trigger new applicable requirements.

f. Table 1. Emission-generating units and activities

| Emission Unit I.D. No. | Unit Description | Associated Control Equipment |
|-------------------------------|---|--|
| J28PC | primary crusher (two identical roll crushers) | enclosure with dust suppressant spray |
| J28S | screen (double deck) | enclosure with dust suppressant spray |
| J28SC | secondary crusher | enclosure with residual from spray |
| J28SSC | sample system crusher | enclosure with residual from spray |
| J28TP | transfer points (all transfers) | enclosure with spray and residual from spray |
| J28D | dozers | none |
| J28WE | wind erosion | none |
| N11PC | primary crusher (roll crusher) | enclosure with dust suppressant spray |
| N11S | screen (single deck) | enclosure with dust suppressant spray |
| N11SSC | sample system crusher | enclosure with residual from spray |
| N11TP | Transfer Points (K-2 and K-3 stockpile and screen/sample systems) | enclosure with dust suppressant spray |
| N11D | dozers | none |
| N11WE | wind erosion | none |
| N8S | single deck screens (two identical) | enclosure with residual from spray |
| N8SC | secondary crusher (two identical, one used only as standby) | enclosure with residual from spray |
| N8SSC | sample system crusher | enclosure with residual from spray |
| N8TP | transfer points (all transfers) | enclosure with spray and residual from spray |

| Emission Unit I.D. No. | Unit Description | Associated Control Equipment |
|-------------------------------|---|---|
| N8D | dozers | none |
| N8WE | wind erosion | none |
| OCTP20 | transfer points (overland conveyor) | enclosure with dust suppressant spray and residual from spray |
| OCTP21A | transfer points (overland conveyor belt 21A to silos) | none |
| SILO | silos | baghouse |
| BMS | screen | enclosure with dust suppressant spray |
| BMSC | secondary crusher | enclosure with dust suppressant spray |
| BMTPS | transfer points at screen and secondary crusher | enclosure with spray and residual from spray |
| BMSSC | sampling system crusher | enclosure with residual from spray |
| BMPSSC | transfer points at sampling system crusher | enclosure with residual from spray |
| BMPC | primary crusher | none |
| BMTPO | transfer points along main belt | none |
| BMCTEC | C&E sampling system crusher | none |
| BMD | dozers | none |
| BMWE | wind erosion | none |
| BM01ST | 12,000 gallon gasoline storage tank | none |
| BM11ST | 12,000 gallon diesel storage tank | none |
| BM12ST | 12,000 gallon diesel storage tank | none |
| BM14ST | 12,000 gallon diesel storage tank | none |
| BM15ST | 12,000 gallon diesel storage tank | none |
| K01ST | 12,000 gallon gasoline storage tank | none |

| Emission Unit I.D. No. | Unit Description | Associated Control Equipment |
|-------------------------------|---|-------------------------------------|
| K07ST | 12,000 gallon diesel storage tank | none |
| SCRAPER | topsoil removal scrapers | none |
| OBDRILL | overburden drilling | none |
| OBBLAST | overburden blasting | none |
| OBDRAG | overburden removal/replacement via dragline | none |
| OBTS | overburden removal/replacement via truck/shovel | none |
| OBDOZER | overburden dozers | none |
| OBHAUL | overburden truck hauling | none |
| CDRILL | coal drilling | none |
| CBLAST | coal blasting | none |
| CTS | coal removal via truck/shovel | none |
| CHAUL | coal truck hauling | none |
| GRADER | graders for road maintenance | none |
| WE | wind erosion | none |
| K08ST | 12,000 gallon gasoline storage tank | none |
| K17ST | 20,000 gallon diesel storage tank | none |
| K18ST | 20,000 gallon diesel storage tank | none |

g. Potential to emit (in tons/year)

Potential to emit (PTE) means the maximum capacity to emit any air pollutant (criteria or HAPs) under its physical and operational design. Any physical or operational limitation on the maximum capacity of the Black Mesa Complex to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may be treated as part of its design if the limitation is enforceable by EPA. PTE is meant to be a worst case emissions calculation and is used in many, though not all, cases to determine the applicability of federal

requirements. Actual emissions may be much lower than PTE.

PWCC has requested that EPA make the operation of PM-10 emission controls an enforceable condition of the title V permit, in order to limit the facility's PTE of PM-10 to 185 tons per year (tpy). This would make the mine a minor source for the purposes of the Prevention of Significant Deterioration (PSD) permitting program, and would allow the facility to make a modification that increased emissions by 249 tpy without triggering PSD.

Although PTE limits may be established in Part 71 permits in order to avoid otherwise applicable requirements such as PSD, such limits must be enforceable as a practical matter. EPA guidance on practical enforceability in the context of permitting can be found in the January 25, 1995 memorandum "Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act:"

In general, practicable enforceability for a source-specific permit means that the permit's provisions must specify: (1) a technically-accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance including appropriate monitoring, recordkeeping, and reporting. (pages 5-6)

In order to establish a PTE limit, EPA would require a short-term emission limit and source testing to verify compliance. The crushers and screens at the Black Mesa Complex are not completely enclosed, and do not have stacks that can be tested for PM-10 emissions with EPA Method 5. A requirement to operate emission control devices would not provide direct data on actual PM-10 emissions and therefore is inadequate to establish a PTE limit. Therefore, EPA is not limiting PWCC's potential to emit in the title V permit.

The PTE calculations provided by PWCC in its permit application assume a 95% control efficiency for emissions units controlled by dust suppressant sprays. However, since the use of the sprays is not required by the permit, the use emission controls may not be assumed for the purposes of calculating PTE. Accordingly, EPA has recalculated the facility's PTE without using the 95% control efficiency assumed by PWCC in its application. Table 2 below shows the revised PTE. The higher PTE that results from discounting the 95% control efficiency does not trigger any new regulatory requirements at this time. However, an increase of PM-10 emissions of 15 tpy or more would trigger PSD.

Table 2. Potential to Emit in Tons per Year

| Unit | Pollutant | | |
|--------|-----------|-------|-----|
| | VOC | PM-10 | HAP |
| J28PC | n/a | 11 | n/a |
| J28S | n/a | 67 | n/a |
| J28SC | n/a | 1 | n/a |
| J28SSC | n/a | 0 | n/a |
| J28D | n/a | 6 | n/a |
| J28WE | n/a | 27 | n/a |
| J28TP | n/a | 2 | n/a |
| N11PC | n/a | 5 | n/a |
| N11S | n/a | 30 | n/a |
| N11SSC | n/a | 0 | n/a |
| N11D | n/a | 1 | n/a |
| N11WE | n/a | 4 | n/a |
| N11TP | n/a | 1 | n/a |
| N8S | n/a | 67 | n/a |
| N8SC | n/a | 1 | n/a |
| N8SSC | n/a | 0 | n/a |
| N8D | n/a | 107 | n/a |
| N8WE | n/a | 26 | n/a |
| N8TP | n/a | 1 | n/a |
| BMPC | n/a | 7 | n/a |
| BMS | n/a | 45 | n/a |
| BMSC | n/a | 0 | n/a |
| BMSSC | n/a | 0 | n/a |
| BMTPS | n/a | 0 | n/a |

| Unit | Pollutant | | |
|--------------|-----------|------------|------------|
| | VOC | PM-10 | HAP |
| BMTPO | n/a | 2 | n/a |
| BMTPSSC | n/a | 0 | n/a |
| BMCTEC | n/a | 0 | n/a |
| SILO | n/a | 0 | n/a |
| BMD | n/a | 15 | n/a |
| BMWE | n/a | 48 | n/a |
| OCTP20 | n/a | 0 | n/a |
| OCTP21A | n/a | 0 | n/a |
| K01ST | 6 | n/a | 0.5 |
| K08ST | 6 | n/a | 0.5 |
| BM01ST | 5 | n/a | 0.4 |
| K17ST | 0 | n/a | n/a |
| K18ST | 0 | n/a | n/a |
| BM11ST | 0 | n/a | n/a |
| BM12ST | 0 | n/a | n/a |
| BM14ST | 0 | n/a | n/a |
| BM15ST | 0 | n/a | n/a |
| K07ST | 0 | n/a | n/a |
| Total | 17 | 474 | 1.4 |

2. Tribe Information

a. General

The reservation of the Navajo Nation is one of the largest Indian reservations in the country, covering more than 26,000 square miles in three states: Arizona, Utah, and New Mexico. The Navajo Nation currently consists of more than 210,000 people. Industries on the reservation include oil and natural gas processing, coal and uranium mining, and tourism.

The reservation of the Hopi Tribe covers more than 2439 square miles in Arizona. The external boundaries of the Hopi reservation are within the external boundaries of the Navajo Nation. The Hopi Tribe currently consists of more than 8100 people.

b. Local air quality and attainment status

All areas of the Navajo Nation and the Hopi Tribe are currently designated as attainment or unclassifiable for all pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established.

3. Applicable Requirements

a. New Source Performance Standard (NSPS) for Coal Preparation Plants, 40 CFR Part 60, Subpart Y

Several emission units at the facility are subject to the 20% opacity requirement in Subpart Y, can be found in conditions II.A.1 and II.A.2. These emission units are identified in section 3.f. below.

PWCC has requested a permit shield for Subpart Y. Part 71 allows the permitting authority to include a permit shield provision in the permit which states that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that the requirements are specifically included in the permit. Since the permit includes all of the applicable requirements of Subpart Y, EPA has approved PWCC's request. The permit shield for Subpart Y is in condition II.G.1.

b. NSPS for Volatile Organic Liquid Storage Vessels, 40 CFR 60, Subpart Kb

Subpart Kb applies to seven storage tanks at the facility. The 12,000 gallon tanks are only subject to a Kb requirement to keep records of the tank dimension storage capacity because they have a design capacity less than 75 m³. Subpart Kb could apply to the 20,000 gallon tanks, depending on the vapor pressure of the stored liquid. To ensure that Subpart Kb does not apply to the 20,000 gallon tanks in the future, condition II.B.1 limits them to the storage of diesel fuel. This means these tanks will always have a vapor pressure less than 15.0 kPa, which means that the 20,000 gallon tanks are also only subject to the Kb requirement to keep records of the tank dimension and storage capacity. This recordkeeping requirement can be found in condition II.D.1.

PWCC has requested a permit shield for Subpart Kb. Since the permit includes all of the applicable requirements of Subpart Kb, EPA has approved

PWCC's request. The permit shield for Subpart Kb is in condition II.G.2.

c. Chemical Accident Prevention Program - 40 CFR Part 68

The Chemical Accident Prevention Program requires sources who use or store regulated substances above a certain threshold to develop plans to prevent accidental releases. Based on PWCC's application, the Black Mesa Complex currently has no regulated substances above the threshold quantities in this rule and therefore is not subject to the requirement to develop and submit a risk management plan. This requirement is included in the permit because PWCC has an ongoing responsibility to submit a risk management plan if a substance is listed that is present at the Black Mesa Complex in quantities over the threshold amount or if PWCC ever increases the amount of any regulated substance at the Black Mesa Complex above the threshold quantity. Including this term in the permit minimizes the need to reopen the permit if PWCC becomes subject to the requirement to submit a risk management plan.

d. Stratospheric Ozone and Climate Protection - 40 CFR Part 82

Based on its application, PWCC currently engages in the activities regulated under this provision at the Black Mesa Complex. Therefore this applicable requirement has been included in the permit.

e. NESHAP 40 CFR part 61, Subpart M - Demolition or Renovation Activity

Based on PWCC's application, the facility is not currently engaged in the activities regulated under this provision. If PWCC conducts any demolition or renovation activity at the Black Mesa Complex, the permittee must assure that the project is in compliance with the federal rules governing asbestos including the requirement to conduct an inspection for the presence of asbestos. Including this term in the permit minimizes the need to reopen the permit if PWCC ever conducts any demolition or renovation activity.

f. Table 3. Summary of Emission Units and Applicable Federal Requirements

| Emission Point/Unit | NSPS Subpart A | NSPS Subpart Y | NSPS Subpart Kb |
|---------------------|----------------|----------------|-----------------|
| J28PC | ✓ | ✓ | |
| J28S | ✓ | ✓ | |
| J28SC | ✓ | ✓ | |

| Emission Point/Unit | NSPS Subpart A | NSPS Subpart Y | NSPS Subpart Kb |
|----------------------------|--|-----------------------|------------------------|
| J28SSC | ✓ | ✓ | |
| J28TP | ✓ | ✓ | |
| N11PC | ✓ | ✓ | |
| N11S | ✓ | ✓ | |
| N11SSC | ✓ | ✓ | |
| N11TP | ✓ | ✓ | |
| N8S | ✓ | ✓ | |
| N8SC | ✓ | ✓ | |
| N8SSC | ✓ | ✓ | |
| N8TP | ✓ | ✓ | |
| OCTP20 | ✓ | ✓ | |
| BMS | ✓ | ✓ | |
| BMSC | ✓ | ✓ | |
| BMTPS | ✓ | ✓ | |
| BMSSC | ✓ | ✓ | |
| BMTPSSC | ✓ | ✓ | |
| BM11ST | | | ✓ |
| BM12ST | | | ✓ |
| BM14ST | | | ✓ |
| BM15ST | | | ✓ |
| K07ST | | | ✓ |
| K17ST | | | ✓ |
| K18ST | | | ✓ |
| Emission Point/Unit | Federal Air Quality Requirement | | |
| Facility-wide requirement | Chemical Accident Prevention 40 CFR 68 | | |

| Emission Point/Unit | NSPS Subpart A | NSPS Subpart Y | NSPS Subpart Kb |
|----------------------------|--|-----------------------|------------------------|
| Facility-wide requirement | Protection of Stratospheric Ozone 40 CFR 82 | | |
| Facility-wide requirement | NESHAP 40 CFR part 61, Subpart M - Demolition or Renovation Activity | | |

g. Table 4. Incorporation of Applicable Requirements into Part 71 Permit

| Requirement | CFR Citation | Condition in Part 71 Permit | Description/Notes |
|-----------------------------|---------------------|------------------------------------|---|
| 40 CFR 60 NSPS Subpart A | 60.1 | n/a | applicability (no requirements) |
| | 60.2 | n/a | definitions (no requirements) |
| | 60.3 | n/a | units and abbreviations (no requirements) |
| | 60.4(a) | II.E.1 | submit reports to EPA Regional office |
| | 60.4(b) | n/a | submit reports to delegated agencies (Tribe not delegated authority for NSPS) |
| | 60.5 | n/a | applicability determinations (places requirements on EPA, not the facility) |
| | 60.6 | n/a | review of plans (places requirements on EPA, not the facility) |
| | 60.7(a) | n/a | notification of construction or reconstruction (one-time only) |
| | 60.7(b) | II.E.2 | records of startup, shutdown, malfunction |
| | 60.7(c) | n/a | CMS reporting (facility does not have CMS) |
| | 60.7(d) | n/a | report format for CMS reporting (facility does not have CMS) |

| Requirement | CFR Citation | Condition in Part 71 Permit | Description/Notes |
|--------------------|---------------------|------------------------------------|---|
| | 60.7(e) | n/a | reporting frequency (standard does not require reporting more than semiannually) |
| | 60.7(f) | II.D.2 | maintain monitoring records (excluding requirements for CMS) |
| | 60.7(g) | n/a | notification required by State/local agency (no such notification required) |
| | 60.7(h) | n/a | disclaimer that Subpart may clarify/make inapplicable any General Provisions |
| | 60.8 | n/a | initial performance tests (one-time only) |
| | 60.9 | II.E.3 | availability of information |
| | 60.10 | n/a | state authority (no requirements) |
| | 60.11(a) | n/a | compliance with non-opacity standards (no requirements) |
| | 60.11(b) | II.C.1; II.C.3 | Method 9 to determine compliance with opacity standards |
| | 60.11(c) | II.A.2 | times when opacity standards apply |
| | 60.11(d) | II.E.5 | good practice to minimize emissions |
| | 60.11(e) | n/a | compliance with opacity standards (initial performance test one time only; no COMS at facility) |
| | 60.11(f) | n/a | special provisions in Subpart supersede General Provisions (no requirements) |
| | 60.11(g) | II.E.6 | credible evidence |
| | 60.12 | II.E.7 | circumvention |
| | 60.13 | n/a | CMS requirements (facility does not have CMS) |
| | 60.14 | n/a | modification (applies to modifications) |

| Requirement | CFR Citation | Condition in Part 71 Permit | Description/Notes |
|---------------------------|---------------------|------------------------------------|---|
| | 60.15 | n/a | reconstruction (applies to reconstruction) |
| | 60.16 | n/a | priority list (no requirements) |
| | 60.17 | n/a | incorporation of test methods by reference |
| | 60.18 | n/a | requirements for flares (facility does not use flares to comply with an NSPS) |
| | 60.19 | II.E.8 | general notification and reporting |
| 40 CFR 60 NSPS Subpart Kb | 60.110b | II.B.1 | true vapor pressure |
| | 60.116b | II.D.1 | keep records of dimension and capacity of storage vessel |
| 40 CFR 60 NSPS Subpart Y | 60.252(c) | II.A.1 | 20% opacity |
| 40 CFR 68 | 68.1 - 68.220 | III.E. | Chemical Accident Prevention. |
| 40 CFR 82 | 82.1 - 82.13 | III.D. | Stratospheric Ozone and Climate Protection |
| 40 CFR 61, Subpart M | 61.140 - 61.157 | III.F. | Demolition or Renovation Activity |

h. Other Requirements

i Inapplicable NSPS Subpart Y requirements

The NSPS for Coal Preparation Plants, Subpart Y, applies to several emission units at the facility. However, there are three applicable requirements in Subpart Y that do not apply to the facility because it does not have pneumatic coal cleaning equipment or thermal dryers. The requirements that do not apply in this case are particulate matter and opacity emission limits for pneumatic coal cleaning equipment, and a temperature monitoring requirement for thermal dryers.

ii Inapplicable NSPS Subpart Kb requirements

The two 20,000 gallon tanks (K17ST and K18ST) are exempt from the NSPS General Provisions and all Subpart Kb requirements except for the requirement to keep records of the tank dimension storage capacity because they are not used to store liquids with a maximum true vapor pressure greater than 15.0 kPa. In order to ensure that these tanks will not store liquids with a vapor pressure that would trigger Kb requirements, Condition II.B.1 allows only diesel fuel to be stored in these tanks.

There are three 12,000 gallon tanks (K01ST, K08ST, and BM01ST) that are exempt from Kb requirements because they are located at gasoline service stations. Tanks of this type are exempt from Subpart Kb. See 40 CFR 60.110b(d)(6).

iii Compliance Assurance Monitoring

CAM applies to emission units subject to an emission limit and with a pre-control potential to emit greater than the title V major source threshold. There are no emission units at the Black Mesa Complex with pre-control potential to emit greater than the title V major source threshold of 100 tpy. Therefore, the facility is exempt from 40 CFR Part 64 CAM requirements.

4. Monitoring

The crushers, screens, and transfer points at the facility are subject to the 20% opacity limit in NSPS, Subpart Y (condition II.A.1). Subpart Y requires an initial Method 9 performance test observation within 180 days of startup to determine compliance with this limit, but no additional monitoring beyond this one-time test. Since subpart Y does not require on-going monitoring to assure compliance, EPA has determined that additional monitoring is necessary in order to assure compliance with the opacity limit. This is consistent with Part 71, which requires that when an underlying applicable requirement does not require periodic testing or monitoring, title V permits must contain “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit” (40 CFR 71.6(a)(3)(i)(B)). Therefore EPA has added monitoring to the permit which we believe satisfies the timeliness, reliability, and representativeness requirements of Part 71. The monitoring is summarized in Table 5 below.

Table 5. Monitoring Added to the Title V Permit

| Monitoring Added to Part 71 Permit | Monitoring Condition # |
|---|------------------------|
| daily visual emission (VE) survey; Method 9 if VE >10% detected | II.C.1 |
| record-keeping for VE or Method 9 | II.C.2 |

| Monitoring Added to Part 71 Permit | Monitoring Condition # |
|--|-------------------------------|
| monthly Method 9 | II.C.3 |
| weekly observation of water sprays | II.C.4 |
| corrective action within 24 hours if any water spray not operating as designed | II.C.5 |
| record-keeping for water spray observations | II.C.6 |

The draft permit exempted the sample system crushers from the monitoring in Table 5. In its comments on the draft permit, PWCC requested that the transfer points associated with the sample system crushers at the Black Mesa Mine and Kayenta Mine also be exempted, due to the minimal emissions from these transfers. EPA agreed with this comment and therefore the monitoring in the final permit does not apply to the sample system crushers or their associated transfer points. The exempted transfer points are:

- head and tail of reject conveyor (BMPSSHRC and BMPSSSTRC)
- No. 2 primary feeder (BMPSS2PF)
- secondary sample feeder (BMPSS2SF)
- secondary sample reject feeder (BMPSS2RF)
- head and tail of primary feeder conveyor belt #3 (J28TPSSHPC3 and J28TPSSSTPC3)
- head and tail of secondary feeder conveyor (J28TPSSHSFC and J28TPSSTSFC)
- head and tail of crusher feeder (J28TPSSHCF and J28TPSSTCF)
- head and tail of gamma-metrics feeder conveyor (J28TPSSHGFC and J28TPSSSTGFC)
- head and tail of gamma-metrics exit feeder conveyor 1 (J28TPSSHGEFC1 and J28TPSSTGEFC1)
- head and tail of gamma-metrics exit feeder conveyor 2 (J28TPSSHGEFC2 and J28TPSSTGEFC2)
- heads (one each from secondary and tertiary cutter reject chutes) and tail of reject conveyor belt #4 (J28TPSSH2RC4, J28TPSSH3RC4, J28TPSSTRC4)
- head and tail of primary feeder conveyor (N11TPSSHPFC and N11TPSSTPFC)
- head and tail of secondary feeder conveyor (N11TPSSHSFC and N11TPSSTSFC)
- head and tail of crusher feeder conveyor (N11TPSSHCFC and N11TPSSTCFC)
- heads (one each from secondary and tertiary cutter reject chutes) and tail of reject feed conveyor belt (N11TPSSH2RFC, N11TPSSH3RFC, and N11TPSSTRFC)

- head and tail of gamma-metrics feeder conveyor (N11TPSSHGFC and N11TPSSTGFC)
- head and tail of gamma-metrics reject feeder conveyor (N11TPSSHGRC and N11TPSSTGRC); and reject chute exit (N11TPSSGRCHU)
- head and tail of secondary feeder conveyor (N8TPSSHSFC and N8TPSSTSFC)
- head and tail of crusher feeder conveyor (N8TPSSHCFC and N8TPSSTCFC);
- head and tail of reject conveyor (N8TPSSHGRC and N8TPSSTGRC)
- tertiary cutter reject chute (N8TPSSHTCHU)

5. Use of All Credible Evidence

Determinations of deviations, continuous or intermittent compliance status, or violations of the permit are not limited to the 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 by the source and EPA in such determinations.

6. EPA Authority

Title V of the Clean Air Act requires that EPA promulgate, administer, and enforce a federal operating permits program when a State does not submit an approvable program within the time frame set by title V or does not adequately administer and enforce its EPA-approved program. On July 1, 1996 (61 FR 34202), EPA adopted regulations codified at 40 CFR 71 setting forth the procedures and terms under which the Agency would administer a federal operating permits program. These regulations were updated on February 19, 1999 (64 FR 8247) to incorporate EPA's approach for issuing Federal operating permits to covered stationary sources in Indian country.

As described in 40 CFR 71.4(a), EPA will implement a part 71 program in areas where a State, local, or Tribal agency has not developed an approved part 70 program. Unlike States, Indian Tribes are not required to develop operating permits programs, though EPA encourages Tribes to do so. See, e.g., Indian Tribes: Air Quality Planning and Management (63 FR 7253, February 12, 1998) (also known as the "Tribal Authority Rule"). Therefore, within Indian country, EPA believes it is generally appropriate that EPA administer and enforce a part 71 federal operating permits program for stationary sources until Tribes receive approval to administer their own operating permits programs.

The Black Mesa Complex is located within the boundaries of reservations of the Navajo Nation and the Hopi Tribe. Consequently, jurisdiction over the source lies with the Tribes and with EPA. Because the Tribes do not have approved Part 70 programs, EPA is issuing the permit under Part 71.

7. Endangered Species Act

Pursuant to Section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536, and its implementing regulations at 50 CFR Part 402, EPA is required to ensure that any action authorized, funded, or carried out by EPA is not likely to jeopardize the continued existence of any Federally-listed endangered species or threatened species or result in the destruction or adverse modification of such species' designated critical habitat. The title V permit EPA is issuing to PWCC for the Black Mesa Complex does not authorize the construction of new emission units, or emission increases from existing units, nor does it otherwise authorize any other physical modifications to the facility or its operations. Therefore, EPA has concluded that the issuance of this permit will have no effect on listed species or their critical habitat.