



Navajo Nation Environmental Protection Agency - Office of The Executive Director

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USEPA Upholds Navajo Nation Air Quality Permit

For Immediate Release:

Window Rock, Ariz.—Navajo Nation President Ben Shelly applauds a recent decision by the United States Environmental Protection Agency to uphold air permits issued by the Navajo Nation EPA.

The permit was challenged by Peabody Western Coal Company. The Peabody permit was the first of the Navajo-issued permits to be challenged.

“I’m glad the USEPA upheld air permits issued by the Navajo Nation EPA. This recognizes Navajo Nation sovereignty and our efforts to protect our land and our people,” President Shelly said.

On March 13, USEPA Environmental Appeals Board upheld a Clean Air Act operating permit issued by the Navajo Nation EPA to Peabody Western Coal Company. The permit sets limits on particulate emissions at the Kayenta Mine, Black Mesa Complex on the Navajo Nation in northern Arizona.

Title V of the Clean Air Act requires every major source of emissions to have an operating permit setting forth all applicable requirements for the source.

“This is a positive outcome for our delegated permitting authority, and this applies to all fourteen Clean Air Act, Title V, facilities on the Navajo Nation,” said NNEPA Director Stephen Etsitty.

NNEPA has been issuing Title V operating permits since 2004, when the USEPA delegated that authority to the NNEPA.

NNEPA issues the permits for fourteen major source facilities on the Navajo Nation, including the Four Corners Power Plant and Navajo Generating Station. Each permit is issued for a five-year term, subject to renewal.

USEPA recognizes two types of Title V operating permits: Part 70 permits, issued pursuant to 40 C.F.R. Part 70 by tribes and states that have their own EPA-approved operating permit programs; and Part 71 permits, issued pursuant to 40 C.F.R. Part 71 either by USEPA or by tribes and states that do not have their own programs but have been delegated authority under 40 C.F.R. § 71.10



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to issue Part 71 permits. Part 71 permits are federal permits, even when issued by a delegated permitting authority, and consequently Part 71 permit appeals are heard by the EAB.

NNEPA issued the Peabody Part 71 permit in December 2009. In 2010, Peabody filed a petition for review of the permit with the appeals board calling into question the use of Navajo Nation procedures for permit issuance and also seeking to delete references in the permit to Navajo Nation statutory and regulatory authorities.

Peabody's appeal meant that the permit did not become effective, and NNEPA requested a remand from the appeals board in order to further explain its authority and procedures for issuing the permit. NNEPA issued a final revised permit in April 2011, and Peabody filed a renewed petition for review with the appeals raising the same issues.

On March 13, 2012 the USEPA Environmental Appeals Board (EAB) upheld a Clean Air Act (CAA) operating permit issued by the Navajo Nation EPA (NNEPA) to Peabody Western Coal Co. (Peabody). The permit sets limits on particulate emissions at the Kayenta Mine, Black Mesa Complex on the Navajo Nation in northern Arizona. Title V of the CAA requires every major source of emissions to have an operating permit setting forth all applicable CAA requirements for the source.

“Peabody has failed to meet its burden of demonstrating that NNEPA made a clear error of law by including references to the [Navajo Nation Operating Permit Regulations] in . . . the Permit or by using tribal procedures, as well as part 71 procedures, to process the Permit;” the Environmental Appeals Board wrote in denying Peabody's petition.

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