



**NAVAJO NATION
ENVIRONMENTAL PROTECTION AGENCY
Navajo Nation Operating Permit Program
Rt. 112 North, Building F004-051
P.O. Box 529, Fort Defiance, AZ 86504**



Detailed Information

Permitting Authority: Navajo Nation Environmental Protection Agency

County: Navajo **State:** Arizona **AFS Plant ID:** 04-017-NAV01

Facility: Peabody Western Coal Company – Black Mesa Complex

Document Type: DRAFT STATEMENT OF BASIS

PART 71 FEDERAL OPERATING PERMIT
DRAFT STATEMENT OF BASIS
Peabody Western Coal Company – Black Mesa Complex
Permit No. NN-OP 08-010

1. Facility Information

a. Permittee

Peabody Western Coal Company – Black Mesa Complex
20 miles SSW of Kayenta, Arizona

Mailing Address:

P.O. Box 650
Kayenta, Arizona 86033

Parent Company Name:

Peabody Holding Company, LLC

Parent Company Mailing Address:

701 Market Street
St. Louis, Missouri 63101-1826

b. Contact Information

Facility Contact: Gary Wendt, Manager – Environmental
Phone: (928) 677-5130
Facsimile: (928) 677-5083

Responsible Official: Kemal Williamson, President
Phone: (314) 342-7586

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. The Navajo Nation Environmental Protection Agency (“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.

d. Permitting and Construction History

The original emission units at the Complex were constructed from 1968 to 1973. The Black Mesa Mine began operations in 1970, followed by the Kayenta Mine in 1973. The Black Mesa mining operation supplied approximately 5.0 million tons of coal to the Mohave Generating Station near Laughlin, Nevada from 1970 until December 2005, when the Black Mesa mining operation ceased delivering coal due to the suspension of operations at the Mohave Generating Station. The Kayenta mining operation produces approximately 8.5 million tons of coal per year exclusively for use at the Navajo Generating Station near Page, Arizona. The construction of the Black Mesa coal mine operation predated the United States Environmental Protection Agency’s (“USEPA”) preconstruction permit regulations, the prevention of significant deterioration (“PSD”) permit program. Therefore, this facility has not been required to obtain a preconstruction permit. The initial coal preparation facilities at the Kayenta mining operation were constructed prior to 1973, also predating the applicability of the PSD permit program. Therefore, this source has not been required to obtain a preconstruction permit.

USEPA issued an initial Title V permit for this source on September 23, 2003. On October 15, 2004, USEPA delegated the Part 71 operating permit program to NNEPA for sources located in the Delegated Program Area, as defined in the Part 71 Delegation Agreement between USEPA and NNEPA, including the source now at issue. NNEPA issued a First Administrative Amendment to the source on February 13, 2007, and a Part 71 renewal permit on December 7, 2009. Peabody Western Coal Company (“PWWC”) petitioned to the Environmental Appeals Board (“EAB”) for review of certain portions of the permit, and NNEPA moved for a voluntary remand of the permit because it intended to propose revisions to the permit. The EAB granted NNEPA’s motion and remanded the permit to NNEPA, for NNEPA to issue a revised final permit. *Peabody Western Coal Co.*, CAA Appeal No. 10-01 (Order issued August 13, 2010).

2. Navajo Nation Information

a. General

The reservation of the Navajo Nation is one of the largest Indian reservations in the United States, covering more than 27,000 square miles in three states: Arizona, Utah, and New Mexico. The Navajo Nation currently is home to more than 260,000 people. Industries on the reservation include oil and natural gas production, coal mining, electric generation and distribution, and tourism.

b. Local air quality and attainment status

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

3. NNEPA Authority

Authority to administer the Part 71 Permit Program was delegated to NNEPA by USEPA in part on October 13, 2004 (for all sources except the Four Corners Power Plant and the Navajo Generating Station), and in whole on March 21, 2006 (for the two power plants).

4. Revisions to Portions of the Title V Permit

NNEPA has reconsidered and is proposing revisions to certain portions of this permit pursuant to the EAB Order of August 13, 2010 in *Peabody Western Coal Co.*, CAA Appeal No. 10-01, and 40 C.F.R. § 71.11(i)(2)(ii). The provisions being revised are listed in Section 5(a) below. The effectiveness of these provisions of the permit is stayed pending a revised final permit decision. *Id.*

NNEPA is proposing to revise the permit sections listed in Section 5(a) of this Statement of Basis to clarify the legal authorities for those provisions. Specifically, in delegating to NNEPA the authority to administer the Part 71 operating permit program, USEPA determined that NNEPA had adequate independent authority to administer the program, as required by 40 C.F.R. § 71.10(a). USEPA found such authority consisted of having adequate permit processing requirements and adequate permit enforcement-related investigatory authorities. Deleg. Agr. §§ IV, V, VI.1, IX.2. There are therefore references to both federal and tribal provisions in this permit. However, the provisions of Navajo law referenced in the permit are tribally enforceable only, under the Navajo Nation Operating Permit Regulations (“NNOPR”) and the Navajo Nation Air Pollution Prevention and Control Act, 4 N.N.C. §§ 1101-1162, which the proposed revisions make clear.

All the terms and conditions of the Part 71 permit are federally enforceable, as provided by 40 C.F.R. § 71.6(b), pursuant to the specific federal authorities cited in the permit. When federal and tribal provisions are cited in parallel, the tribal provisions are identical to the federal provisions and NNEPA is proposing that compliance with the federal provisions will constitute compliance with the tribal counterparts. These parallel tribal citations do not create any new requirements, nor do they impact the federal enforceability of the cited Part 71 requirements.

Section IV.A of the permit (Fee Payment) cites only the NNOPR as its source of authority. USEPA determined that NNEPA could collect sufficient revenue under its own authorities to fund a delegated Part 71 Program. Deleg. Agr. at 1 and § II.2. USEPA therefore waived collection of federal permit fees, pursuant to 40 C.F.R. § 71.9(c)(2)(ii). The proposed revisions would clarify that the fee provision in § IV.A of the permit is not a term or condition of the Part 71 permit, but rather of the tribal component of the permit, and so is not federally enforceable.

Section IV.C (Compliance Certifications) is proposed to be revised so that compliance certifications are provided to both NNEPA and USEPA on a semiannual basis, instead of requiring different schedules for each agency. This revision is consistent with 40 C.F.R. §71.6(c)(5)(i). NNEPA, as the delegated permitting authority, has determined that semiannual rather than annual compliance certification is appropriate because it provides greater assurance that the facility is operating in compliance on an ongoing basis. Accordingly, the previous § IV.C.2, which was a tribally enforceable-only compliance certification requirement, is proposed to be deleted. Also, as an administrative amendment, this proposed condition clarifies the timing of the submittal of the semiannual reports.

Finally, as an administrative amendment to the permit, the proposed permit removes the reference to “NNEPA” in § II.A.1. The provision simply requires the submittal of New Source Performance Standard compliance correspondence to USEPA, and the reference to NNEPA was a typographical error.

5. Public Participation

a. Public Notice

The EAB Order of August 13, 2010 instructs NNEPA, in reconsidering and revising the challenged portions of the permit, to act in accordance with the same procedures and authorities it used for initial permit issuance. Slip op. at 14. As required by NNOPR § 403(A), the proposed revisions to these portions of the permit will be publicly noticed and made available for public comment. The content, methods, and timing of public notice are described in NNOPR § 403(B)-(D), and include a 30-day public comment period. *See also* 40 C.F.R. § 71.11(d) (equivalent public notice and comment provisions).

NNEPA is proposing revisions to and therefore will consider comments on the following sections of the permit only:

- III.B. Reporting Requirements
- IV.A. Fee Payment
- IV.B. Blanket Compliance Statement
- IV.C. Compliance Certifications
- IV.D. Duty to Provide and Supplement Information
- IV.E. Submissions
- IV.G. Permit Actions

- IV.H. Administrative Permit Amendments
- IV.I. Minor Permit Modifications
- IV.K. Significant Permit Modifications
- IV.L. Reopening for Cause
- IV.Q. Off Permit Changes¹

Public notice of this proposed permit action will be provided by mailing a copy of the notice to the permittee, USEPA Region 9, and the affected state (Arizona). A copy of the notice will also be provided to all persons who submitted a written request to be included on the mailing list to the following individual:

Charlene Nelson (Program Supervisor)
Navajo Air Quality Control Program
Operating Permit Program Section
P.O. Box 529
Fort Defiance, AZ 86504

E-mail: charlenenelson@navajo.org

Public notice will be published in a daily or weekly newspaper of general circulation in the area affected by this source.

b. Opportunity for Comment

Members of the public may review a copy of the draft permit prepared by NNEPA, this statement of basis, and all supporting materials, at:

Navajo Nation Air Quality Control Program
Route 112 North, Bldg No. F004-51
Fort Defiance, AZ 86504

Copies of the draft permit and this statement of basis can also be obtained free of charge from NNEPA's website:

www.navajonationepa.org/opp/permits.html

or by contacting Charlene Nelson at the NNAQCP address listed above or by telephone at (928) 729-4247. All documents will be available for review at the NNAQCP office indicated above during regular business hours.

¹ In addition, NNEPA has used this opportunity to make a few revisions to the permit in the nature of administrative permit amendments, which are not subject to public notice and comment. *See* 40 C.F.R. § 71.7(d), NNOPR § 405(C). These revisions consist of corrections to typographical errors, citations, and grammatical errors and are indicated by red-lining. They are in permit conditions II(A)(1); III(B)(1)(c); IV(A)(1), (4), (6); IV(C)(1), IV(E); and IV(Q)(3) - (5), some of which are discussed above.

If you have comments on the portions of the permit that are proposed to be revised, which are listed in Section 5(a) above, you must submit them during the 30-day public comment period. All significant comments received during the public comment period and all significant comments made at any public hearing will be considered in arriving at a final decision on the portions of the permit that are proposed to be revised. The final permit is a public record which can be obtained by request. A statement of reasons for changes made to the draft permit and Responses to Comments received will be sent to persons who commented on the portions of the permit at issue.

If you believe that any permit conditions listed in Section 5(a) above are inappropriate, you must raise all reasonably ascertainable issues and submit all arguments supporting your position by the end of the comment period. Any supporting documents must be included in full and may not be incorporated by reference, unless they are already part of the administrative record for this permit or consist of tribal, state or federal statutes or regulations or other generally available reference materials.

c. Opportunity to Request a Hearing

A person may submit a written request for a public hearing to Charlene Nelson, at the address listed in Section 5(a) above, stating the nature of the issues to be raised at the public hearing. NNEPA will hold a public hearing if it finds there is a significant degree of public interest in the portions of the permit that are proposed to be revised. If a public hearing is scheduled, NNEPA will provide public notice of the hearing and any person may submit oral or written statements and data concerning those portions of the permit.

d. Mailing List

If you would like to be added to our mailing list to be informed of future actions on this or other Clean Air Act permits issued on the Navajo Nation, please send your name and address to Charlene Nelson at the address listed in Section 5(a) above.