

**DELEGATION OF AUTHORITY
TO ADMINISTER A PART 71 OPERATING PERMITS
PROGRAM**

DELEGATION AGREEMENT

BETWEEN

US ENVIRONMENTAL PROTECTION AGENCY REGION IX

AND

**NAVAJO NATION ENVIRONMENTAL PROTECTION
AGENCY**

WHEREAS, the U.S. Environmental Protection Agency Region IX (“EPA”) administers and enforces a federal operating permits program in the Delegated Program Area (as defined below) pursuant to Title V of the Clean Air Act (“CAA”) as amended (1990), and 40 C.F.R. Part 71 (“Part 71 Program”).

WHEREAS, pursuant to Section 301(d) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7601(d), and 40 C.F.R. § 49.7, the Navajo Nation Environmental Protection Agency (“NNEPA”), on behalf of the Navajo Nation, formally requested in a letter dated June 17, 2004, that EPA find that the Navajo Nation meets the eligibility requirements under CAA Section 301(d) and 40 C.F.R. § 49.6 for treatment in the same manner as a State for Part 71 Program delegation purposes (“TAS Request”).

WHEREAS, in a separate letter dated July 16, 2003, NNEPA also formally requested that EPA, pursuant to 40 C.F.R. § 71.10, delegate authority to NNEPA, as a delegate agency (“Delegation Request”), to administer and enforce the Part 71 Program in certain areas subject to the TAS Request and identified in “Attachment 1” of this agreement (“Delegated Program Area”). The Delegation Request covers all Title V sources in the Delegated Program Area except for the two facilities specified in the sixth whereas clause below.

WHEREAS, EPA, consistent with 40 C.F.R. § 49.9, notified appropriate governmental entities and the public of NNEPA’s TAS Request, and provided 30 days for review and comment on the Navajo Nation’s jurisdictional assertions.

WHEREAS, EPA has reviewed NNEPA’s TAS Request and has determined that the Navajo Nation meets all of the criteria for such treatment as set forth at 40 C.F.R. § 49.6 to administer a delegated Part 71 Program in the Delegated Program Area.

WHEREAS, NNEPA is not currently seeking to administer the delegated Part 71 Program over the Four Corners Power Plant and the Navajo Generating Station, and the administration of the Part 71 Program for these two sources is not being delegated to NNEPA. Accordingly, the references to Part 71 sources in this Delegation Agreement do not include the Four Corners Power Plant and the Navajo Generating Station.

WHEREAS, EPA has determined that the Navajo Nation has enacted laws and promulgated rules that, by their terms, adequately authorize NNEPA to collect sufficient revenue to carry out all duties necessary to administer a delegated Part 71 Program and to engage in the enforcement investigatory activities described in Section VI.1 of this Delegation Agreement.

WHEREAS, EPA has reviewed NNEPA’s request for delegation and the accompanying opinion of the Navajo Nation Attorney General in support of that request and has determined that NNEPA meets all of the criteria for designation as a “delegate agency” set forth at 40 C.F.R. Part 71.

WHEREAS, NNEPA currently intends to submit to EPA on behalf of the Navajo Nation an application for full Part 70 program approval and both agencies agree, as appropriate, to work diligently towards the goal of a fully approved Part 70 program.

WHEREAS, NNEPA and EPA both recognize that the delegation of administration of the Part 71 Program prior to approval of the Part 70 Program application (if a Part 70 Program application is submitted and approved), will help NNEPA develop its Title V program.

WHEREAS, this Agreement may be modified, amended, or revoked in part or in whole by EPA after consultation with NNEPA.

WHEREAS, by entering into this Delegation Agreement, neither NNEPA nor EPA intends to create a document that creates any enforceable rights in third parties who are not signatories to this agreement.

WHEREAS, this Delegation Agreement may be signed by EPA and NNEPA in counterparts.

WHEREAS, NNEPA acknowledges that by operation of the CAA, NNEPA will administer the existing federal operating permit program pursuant to 40 C.F.R. Part 71 effective on October X, 2004 within the Delegated Program Area.

THEREFORE, EPA and NNEPA agree to enter into this Delegation Agreement as follows:

I. GENERAL:

1. Notifications:

- a. The EPA Region IX Regional Administrator shall send a letter to the President of the Navajo Nation to provide notice of the effective date of EPA's full delegation to administer the Part 71 Program to NNEPA.
- b. NNEPA will publish notices in newspapers of local circulation that cover news in the Delegated Program Area notifying the public that NNEPA will receive full delegation to administer the Part 71 Program in that area. NNEPA agrees to make efforts to publicize the Part 71 Program through its website, mailing lists, and other appropriate means. Such notifications shall identify points of contact at NNEPA and EPA.
- c. EPA shall publish a Federal Register notice informing the public that NNEPA will receive full delegation to administer the Part 71 Program in the Delegated Program Area as of the effective date of the delegation. (40 C.F.R. §§ 71.4(g) and 71.10(b))

2. EPA will provide technical support and assistance to NNEPA toward the administration of the Part 71 Program and the activities discussed below in Part VI, including the development of appropriate permit conditions, and determining applicability of the federal regulations.
3. NNEPA agrees to require Part 71 permits of all Part 71 sources as defined by 40 C.F.R. § 71.3(a).
4. NNEPA agrees to process all claims of confidentiality relating to information submitted to the Navajo Nation pursuant to the Part 71 Program and protect information submitted under such a claim unless or until a determination is made that the information is not entitled to confidential treatment. NNEPA agrees to obtain concurrence from EPA before releasing information submitted under a claim of confidentiality.
5. This Agreement may be modified, amended, or revoked in part or in whole by EPA after consultation with NNEPA. Any such modification, amendment, or revocation shall be effective as of the date specified in a notice to the NNEPA.

II. PART 71 FEES:

1. NNEPA agrees to collect permit fees from all Part 71 sources in a manner consistent with Subpart VI of the Navajo Nation Operating Permit Regulations. Pursuant to 40 C.F.R. § 71.9(b), such permit fees will be used solely for the purposes of implementing the Part 71 Program, which includes, but is not limited to, the following activities as they relate to the Part 71 Program:
 - a. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
 - b. Processing permit reopening;
 - c. General administration of the permit program, including transition planning, interagency coordination, contract management, training, informational services and outreach activities, assessing and collecting fees, the tracking of permit applications, compliance certifications, and related data entry;
 - d. Implementing and enforcing the terms of a Part 71 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
 - e. Emissions and ambient monitoring, modeling, analyses, demonstrations, preparation of inventories, and tracking emissions, provided these activities are needed in order to issue and implement part 71 permits; and

- f. Providing direct and indirect support to small business stationary sources in determining applicable requirements and in receiving permits under Part 71.
2. Upon the effective date of this Delegation Agreement, EPA hereby waives fees from Part 71 sources located in the Delegated Program Area pursuant to 40 C.F.R. §71.9(c)(2)(ii), in light of EPA's determination that the NNEPA has enacted laws and promulgated rules that, by their terms, adequately authorize NNEPA to collect fee revenue and that such fee revenue will be sufficient to administer the delegated Part 71 Program and conduct the activities discussed below in Part VI.
3. EPA retains its right to collect fees from all owners or operators of Part 71 sources if EPA makes a later determination that NNEPA is not collecting fees sufficient to fund an adequate delegated Part 71 Program or if EPA withdraws NNEPA's status as a delegate agency authorized to administer the Part 71 Program.
4. Upon the effective date of this Delegation Agreement, notwithstanding the fee payment provisions of the current Part 71 permits, NNEPA shall begin collecting fees from all Part 71 sources in the Delegated Program Area pursuant to Subpart VI of the Navajo Nation Operating Permit Regulations.

III. PART 71 APPLICATIONS:

1. EPA has provided the NNEPA with a comprehensive list of those sources that have already received a Title V operating permit from EPA Region IX and of those sources that have not yet received a Part 71 permit and will (or may) require a Part 71 permit. NNEPA agrees to provide an updated list annually to EPA Region IX of sources that may require Part 71 permits during the course of NNEPA's administration of the Part 71 Program.
2. EPA agrees to send to NNEPA, by September 1, 2004, copies of all Part 71 applications for sources in the Delegated Program Area for which initial Part 71 permits have not yet been issued.
3. NNEPA agrees to review and make a determination of completeness for each new Part 71 permit application within 60 days of receipt. NNEPA agrees to promptly inform the applicant and EPA of the results of each application completeness review.
4. NNEPA agrees to submit to EPA on a semi-annual basis a list of all permit applications NNEPA intends to process. The initial list will be due to EPA on April 15, 2005 for the period of May 1, 2005 through October 31, 2005. Subsequent lists shall be provided on the 15th day of the month prior to the start of the relevant six-month period.

5. NNEPA agrees to provide adequate notice to the public through appropriate means upon receipt of a new application for a Part 71 permit, revision or renewal.

IV. PERMIT DEVELOPMENT AND REVIEW:

1. NNEPA agrees to draft each Part 71 permit to include all permit elements cited under 40 C.F.R. § 71.6 and all CAM requirements under 40 C.F.R. Part 64. NNEPA agrees to draft the permit, with guidance from EPA where appropriate, to ensure that all Part 71 requirements are incorporated into the permit. NNEPA shall provide EPA an opportunity to review a copy of the draft permit prior to the beginning of the public comment period. NNEPA also agrees to prepare a technical review memorandum and statement of legal and factual basis for each Part 71 permit in accordance with 40 C.F.R. § 71.11(b). Although not a requirement of the Delegation Agreement and not part of the administration of the federal Part 71 program, NNEPA intends to supplement the requirements in § 71.11(b) with the requirements in the Navajo Nation Operating Permit Regulation § 401(B).
2. NNEPA agrees to conduct all administrative permit proceedings in accordance with 40 C.F.R. § 71.11, including but not limited to the public notification for permit issuance with a 30-day comment period, availability of permit information, and opportunity for a public hearing. NNEPA agrees to provide EPA with notice of all permit comment periods in advance of the initiation of the 30-day public comment period. Although not a requirement of the Delegation Agreement and not part of the administration of the federal Part 71 program, NNEPA intends to supplement the requirements in § 71.11 concerning administrative permit proceedings with the requirements in the Navajo Nation Operating Permit Regulation.
3. NNEPA agrees to prepare a proposed permit that incorporates all necessary changes, including any changes that result from EPA comments and the public comment period. NNEPA agrees to submit to EPA a copy of the proposed permit along with NNEPA's responses to all comments received on the draft permit and all necessary supporting information (40 C.F.R. § 71.11(j)). EPA shall have 45 days from its receipt of the permit to review and object to the proposed permit in accordance with the procedures set forth at 40 C.F.R. § 71.10(g).
4. EPA will review proposed permits to ensure that they comply with all requirements of the Act, the regulations promulgated thereunder, and any other applicable laws and regulations. EPA intends to use its review authority to ascertain whether each proposed permit contains all information required by 40 C.F.R. § 71.6.
5. NNEPA agrees to follow its transition plan for permit issuance, provided for in Attachment "2" of this agreement.
6. EPA shall object to the issuance of any proposed permit determined not to be in compliance with Part 71, the Act or any other applicable requirement. NNEPA shall not issue a permit if

the Regional Administrator objects in writing within 45 days of receipt of the proposed permit and all necessary supporting information. Any EPA objections shall include a statement of the reasons for objection and a description of the terms and conditions that the permit must include to respond to the objection. EPA shall provide a copy of the objection to the permit applicant. (40 C.F.R. § 71.10(g)(1) and (2)).

7. EPA shall object to a Part 71 permit if NNEPA fails to do any of the following:
 - a. submit a copy of each permit application upon EPA request, each proposed permit, and each final permit;
 - b. submit any information necessary to adequately review the proposed permit;
 - c. process the permit under the procedures required under 40 C.F.R. § 71.7 and 71.11; or
 - d. comply with the requirements of 40 C.F.R. § 71.8(a).(40 C.F.R. § 71.10(g)).
8. NNEPA agrees, within 90 days after the date of an objection, to revise and submit to EPA a proposed permit in response to the objection. If NNEPA fails to do so, EPA shall issue or deny the permit in accordance with the requirements of Part 71. (40 C.F.R. § 71.10(g)(3)).
9. EPA shall receive and act upon all petitions from any interested person to reopen a permit for cause in accordance with 40 C.F.R. § 71.11(n). (40 C.F.R. §§ 71.10(h) and (j)(2)).
10. EPA may reopen any permit if it finds that cause exists to terminate, modify, or revoke and reissue a permit. EPA intends to follow all procedures found in 40 C.F.R. § 71.7. (40 C.F.R. § 71.7(g)).
11. EPA is not delegating its authority to object to the issuance of a Part 71 permit nor its authority to act upon petitions submitted by the public. (40 C.F.R. § 71.10(j)).
12. NNEPA agrees, upon satisfactory completion of all administrative procedures, to issue all final Part 71 permits under signature authority of the Executive Director of the Navajo Nation Environmental Protection Agency or his/her designee.

V. PART 71 PERMIT REVISIONS AND RENEWALS:

1. NNEPA agrees to continue to administer permits issued under the Part 71 Program and conduct the activities discussed below in Part VI until all Part 71 permits are replaced with Part 70 permits issued pursuant to an approved Part 70 Program. All Part 71 permits that must be renewed while the Part 71 Program is effective will be renewed following the procedures of the Delegation Agreement, Part 71 and the Act. (40 C.F.R. § 71.4(k)).
2. NNEPA agrees to revise, reopen, terminate or revoke and reissue Part 71 permits, as necessary and appropriate, using the procedures of the Delegation Agreement, Part 71 and the Act. (40 C.F.R. § 71.4(k)).

3. As soon as practicable, but no later than six months after this delegation becomes effective, using the appropriate procedures for reopenings or revisions contained in Part 71, NNEPA shall revise all EPA-issued Part 71 permits to reflect the change in permitting authority. These changes include, but are not limited to, changes in annual fee submittals and changes to reporting requirements.
4. Although not a requirement of this Delegation Agreement and not part of the administration of the federal Part 71 program, NNEPA intends to supplement the requirements in Part 71 with the requirements in the Navajo Nation Operating Permit Regulations.

VI. ENFORCEMENT:

1. While this Delegation Agreement is in effect, NNEPA agrees to conduct the following activities with respect to Part 71 sources:
 - a. development of compliance plans and schedules of compliance;
 - b. compliance and monitoring activities, including review of monitoring reports and compliance certifications, inspections, audits, conducting and/or reviewing stack tests, and issuance of requests for information either before or after a violation is identified; and
 - c. enforcement-related activities, including issuance of notices, findings, and letters of violation and development of cases up until the filing of a complaint or order.
2. Administrative and judicial enforcement actions by NNEPA are not covered by this Delegation Agreement. This Agreement does not preclude NNEPA from pursuing administrative and judicial enforcement actions under its independent authorities. Where NNEPA pursues such actions, NNEPA shall provide notice to EPA following the procedures specified in Part VI(7).
3. EPA maintains its full federal investigative and enforcement authorities available under the Act, including those specified in 40 C.F.R. §71.12.
4. EPA intends to provide training and guidance to the NNEPA staff in order to develop NNEPA's enforcement program.
5. EPA intends to inspect and conduct comprehensive compliance investigations in conjunction with NNEPA of Part 71 facilities located in the Delegated Program Area; such inspections and investigations shall be performed consistent with EPA's Part 71 Compliance Monitoring Strategy policy.

6. Action taken by NNEPA under this Delegation Agreement shall in no way preclude EPA from enforcing any provision or requirement of Part 71 or the Clean Air Act.
7. NNEPA, upon becoming aware of possible civil violations or criminal activity regarding compliance with the Part 71 Program, shall notify and provide evidentiary documentation to the following EPA offices of such activity as soon as possible, but in all instances no later than 30 days after discovery of the activity. For civil violations, NNEPA shall provide notification and documentation to the Region IX Air Division, Enforcement Branch. For criminal activity, NNEPA shall provide notification and documentation to the EPA Criminal Investigation Division (CID).

VII. SUBMITTAL OF INFORMATION:

1. Permit Issuance:

- a. NNEPA agrees to submit permit information to EPA initially by electronic mail, followed by a signed copy of the original document.
- b. NNEPA shall submit to EPA a list of all permits to be processed semi-annually, as described in section III.4 of this agreement. The first list shall be submitted by April 15, 2005.
- c. The permit application and completeness determination for each permit, permit revision, or permit renewal shall be submitted to EPA once NNEPA has made a completeness determination.
- d. The draft permit for each initial permit, permit revision, or permit renewal will be submitted to EPA before it is made available for public comment. A copy of the technical review memorandum or statement of legal and factual basis and all necessary supporting information will also be submitted. A copy of the public notice shall be submitted to EPA when published.
- e. NNEPA agrees to submit to EPA any public comments that were received on the draft permit, permit revision, or permit renewal and a summary of how the draft initial permit, permit revision, or permit renewal was changed to respond to comments.
- f. The proposed permit, permit revision, or permit renewal resulting from consideration of public comments and the comments of affected States on the draft will be submitted to EPA after the end of the 30-day public comment period. Upon receipt of the proposed permit and all necessary supporting documentation, EPA will start its 45-day review period.
- g. The final permit, permit revision, or permit renewal will be submitted to EPA upon issuance.
- h. NNEPA expects to post on its website a list that identifies each draft and final Part 71 permit. The list will identify the permit, the public comment period, and the locations where the public may obtain a copy of the permit.

2. Permit Reporting:

In regards to reporting requirements, all Part 71 permits, including those issued pursuant to Section V.3 of this Delegation Agreement, shall require that all Part 71 sources submit all reports, compliance certifications, and other submittals required by Part 71 and the Part 71 permits to both EPA and NNEPA.

3. Fee Auditing:

NNEPA agrees to submit a certified annual report that accounts for all Title V fees collected that fiscal year, all Title V expenditures and all Title V funds carried over from the previous fiscal year. The initial report will be due to EPA on September 1, 2005 and will account for the period beginning on the effective date of this agreement through December 31, 2004. Subsequent reports shall be provided on April 1 of each year and will account for the preceding calendar year.

4. Data Management: NNEPA agrees to input into AIRS on at least a monthly basis all data pertaining to each permit including name, AFS plant identification number, permit number assigned, new permit or modification, and final permit issuance date.
5. Retention of Records: NNEPA shall keep each draft, proposed, and final permit and application for permit renewal or modification for at least five years.

VIII. PART 71 IMPLEMENTATION ASSESSMENT:

1. EPA intends to assess NNEPA's administration of the Part 71 Program on an ongoing basis for consistency with the Delegation Agreement, Part 71, and the Act.
 - a. EPA intends to consider any written comments from regulated parties, the public or any federal, state, tribal or local agency regarding the implementation of Part 71 in the Delegated Program Area. EPA intends to promptly provide copies of such documents to NNEPA.
 - b. EPA intends to assess the Part 71 Program by examining NNEPA files and documents for selected facilities to determine whether permits are processed, issued, reopened, revised, renewed, and enforced in a manner consistent with this Delegation Agreement, Part 71, and the Act.
2. EPA intends to assess NNEPA's Part 71 fee administration to ensure that sufficient fees are being collected to adequately administer the Part 71 Program and conduct activities as described above in Part VI, and to ensure that all Part 71 fees are being expended appropriately.
3. If EPA determines that NNEPA is not adequately administering the program or conducting activities as described above in Part VI, EPA will notify NNEPA of that determination as

soon as possible, along with the reasons for it. EPA and NNEPA will then collaboratively determine the process for correcting the program deficiencies in an expeditious manner. EPA also intends to determine whether the activities to correct the deficiencies warrant assessing additional fees from all Part 71 sources and/or withdrawal of the delegation of the Part 71 Program.

IX. TRANSITION TO AN APPROVED PART 70 PROGRAM:

1. NNEPA agrees to promptly suspend issuance of Part 71 permits in the event EPA publishes a notice of approval of the Tribe's operating permits program under Part 70. NNEPA may continue using the Delegation Agreement and Part 71 for any Part 71 permits for which the administrative or judicial review process is not complete. EPA intends to further address this issue in any notice of Tribal program approval in the event the Tribe applies for approval of a Part 70 Program, and EPA approves the Tribal program. (40 C.F.R. §71.4(l)).
2. NNEPA agrees to continue to administer Part 71 permits, and conduct activities as described above in Part VI, until they are replaced by permits issued under an approved Part 70 Program. Until such time as all Part 71 permits are replaced with Part 70 permits, NNEPA agrees to continue to revise, reopen, terminate or revoke and reissue Part 71 permits, as necessary and appropriate, using the procedures of Subpart IV of the Navajo Nation Operating Permits Regulation.

X. EFFECTIVE DATE

1. This Delegation Agreement between EPA and NNEPA will be effective on the later date this Agreement is signed by the EPA Region IX Regional Administrator, the Executive Director of the NNEPA and the President of the Navajo Nation.

XI. SIGNATURES

_____ Date:
Wayne Natri
Regional Administrator
U.S. Environmental Protection Agency - Region IX

XI. SIGNATURES

_____ Date:
Stephen B. Etsitty
Director
Navajo Nation Environmental Protection Agency

_____ Date:
Joe Shirley
President
Navajo Nation

Attachment 1
EPA's Approval of NNEPA's TAS Application
to Administer a Delegated Part 71 Program

Attachment 2
NNEPA's Transition Plan for Permit Issuance

