

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

**SUPPLEMENTAL DELEGATION AGREEMENT**

**BETWEEN**

**U.S. ENVIRONMENTAL PROTECTION AGENCY REGION IX**

**AND**

**NAVAJO NATION ENVIRONMENTAL PROTECTION  
AGENCY**

**MARCH 21, 2006**

WHEREAS, On October 15, 2004, U.S. EPA Region IX and the Navajo Nation Environmental Protection Agency (“NNEPA”) entered into a delegation of authority agreement (“October 2004 Delegation Agreement”) to allow NNEPA to administer the federal Part 71 operating permits program on behalf of EPA (“Part 71 Program”) for all Part 71 sources within a Delegated Program Area specified in that agreement except for two sources, the Four Corners Power Plant and the Navajo Generating Station (“Power Plants”).

WHEREAS, The Navajo Nation and the participants of the Power Plants disagree as to the Nation’s jurisdiction to regulate the Power Plants under a delegated Part 71 Program based on the existence of certain provisions contained in leases and grants of rights-of-way (the “Covenants” and “Grants”) as between the Navajo Nation and the two facilities.

WHEREAS, On May 18, 2005, NNEPA entered into a voluntary compliance agreement (“VCA”) with the participants of the Power Plants, which provides that the parties will not assert or challenge any effect of Covenants and Grants on the authority of NNEPA to administer a delegated Part 71 program on behalf of EPA with respect to the Plants or on the applicability to the Plants of the requirements of the Navajo Nation laws that have been expressly incorporated into a Part 71 permit administered by the Navajo Nation EPA, without prejudice to their rights to assert or challenge the Covenants or Grants after expiration or termination of the VCA.

WHEREAS, for so long as the VCA remains in effect, the VCA resolves the dispute between the Navajo Nation and the Power Plants as to any impact of the Covenants or Grants on NNEPA’s ability to regulate the Power Plants pursuant to the delegation of the administration of the 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 formally requested in a letter submitted in August 2005, that U.S. 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”) for the Power Plants.

WHEREAS, in the same letter submitted in August 2005, the Tribe also formally requested that U.S. EPA, pursuant to 40 C.F.R. § 71.10, supplement the October 2004 Delegation Agreement by delegating authority to NNEPA, as a delegate agency (“Supplemental Delegation Request”), to administer the Part 71 Program for the Power Plants.

WHEREAS, U.S. EPA, consistent with 40 C.F.R. § 49.9, notified appropriate governmental entities and the public of the Tribe’s TAS Request, and provided 30 days for review and comment on the Navajo Nation’s jurisdictional assertions; no comments were received.

WHEREAS, U.S. EPA has reviewed the Tribe’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 on behalf of EPA for the Power Plants.

WHEREAS, U.S. EPA has reviewed the Tribe's Supplemental Delegation Request 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 with respect to the Power Plants.

WHEREAS, U.S. EPA has determined that the Navajo Nation has enacted laws and promulgated rules and has entered into the VCA with the Power Plants that, by their terms, adequately demonstrate authority for NNEPA to collect sufficient revenue to carry out all duties necessary to administer a delegated Part 71 Program and to engage in the enforcement and investigatory activities described in Section VI.1 of the October 2004 Delegation Agreement for the Power Plants.

WHEREAS, by entering into this supplemental delegation agreement ("Supplemental Delegation Agreement"), neither NNEPA nor U.S. EPA intends to create a document that creates any enforceable rights in third parties who are not signatories to this agreement.

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

WHEREAS, NNEPA acknowledges that by operation of the CAA, NNEPA will administer the existing federal operating permit program on behalf of EPA pursuant to 40 C.F.R. Part 71 effective on March \_\_, 2006 for the Power Plants.

THEREFORE, U.S. EPA and NNEPA agree to enter into this Supplemental Delegation Agreement as follows:

## **I. GENERAL:**

1. This Supplemental Delegation Agreement modifies the October 2004 Delegation Agreement by expanding any reference to Part 71 sources or permits in that agreement to now include the Power Plants and the Part 71 permits for those plants.
2. Except as provided in Section I.3, below, all provisions of the October 2004 Delegation Agreement hereafter apply to the Power Plants.
3. Where a provision of this Supplemental Delegation Agreement materially differs from a provision of the October 2004 Delegation Agreement, the provision of this Supplemental Delegation Agreement will control regarding NNEPA's administration of the Part 71 Program for the Power Plants.
4. Other than as specified herein, this Supplemental Delegation Agreement in no way modifies the October 2004 Delegation Agreement.
5. Notifications:

- a. The U.S. EPA Region IX Regional Administrator shall send a letter to the President of the Navajo Nation to provide notice of the effective date of U.S. EPA's full delegation to administer the Part 71 Program on behalf of EPA for the Power Plants to NNEPA.
- b. U.S. EPA shall publish a Federal Register notice informing the public that NNEPA has received full delegation to administer the Part 71 Program on behalf of EPA in the Delegated Program Area for the Power Plants, as of the effective date of this Supplemental Delegation Agreement. (40 C.F.R. §§ 71.4(g) and 71.10(b)).
- c. NNEPA will publish notices in newspapers of local circulation that cover news in the Delegated Program Area notifying the public that NNEPA has received full delegation to administer the Part 71 Program on behalf of EPA for the Power Plants. 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 U.S. EPA.

## **II. PART 71 FEES:**

1. Upon the effective date of this Supplemental Delegation Agreement, U.S. EPA hereby waives fees from the Power Plants pursuant to 40 C.F.R. §71.9(c)(2)(ii), in light of U.S. EPA's determination that the Navajo Nation has enacted laws and promulgated rules and has entered into the VCA with the Power Plants that, by their terms, adequately demonstrate authority for NNEPA to collect fee revenue sufficient to administer the delegated Part 71 Program on behalf of EPA and otherwise conduct for the Power Plants the activities outlined in the October 2004 Delegation Agreement.
2. Upon the effective date of this Supplemental Delegation Agreement, notwithstanding the fee payment provisions of the current Part 71 permits for the Power Plants, NNEPA shall begin collecting fees from the Power Plants consistent with the VCA and Subpart VI of the Navajo Nation Operating Permit Regulations.

## **III. PART 71 PERMIT REVISIONS AND RENEWALS:**

1. As soon as practicable, but no later than six months after this Supplemental Delegation Agreement becomes effective, using the appropriate procedures for reopening or revision contained in Part 71, NNEPA shall revise the U.S. EPA-issued Part 71 permits for the Power Plants to reflect that NNEPA will now be issuing permits to the plants on behalf of EPA pursuant to the Supplemental Delegation Agreement. These changes include, but are not limited to, changes in annual fee submittals and changes to reporting requirements. This revision will not be necessary if such changes are included in a Part 71 renewal permit issued by NNEPA within six months of the effective date of this Supplemental Delegation Agreement.
2. NNEPA will process in a timely manner, the current applications for renewal Part 71 permits submitted to U.S. EPA Region IX by the Navajo Generating Station and the Four Corners Power Plant on November 17 and December 8, 2005 respectively.

#### **IV. TERMINATION, MODIFICATION, AMENDMENT OR REVOCATION OF THE SUPPLEMENTAL DELEGATION AGREEMENT:**

1. Except as otherwise specified in Section IV.2, below, this Supplemental Delegation Agreement may be modified, amended, or revoked in part or in whole by U.S. EPA after consultation with NNEPA. Any such modification, amendment, or revocation shall be effective as of the date specified in a written notice to NNEPA.
2. Without need for a written notice to NNEPA, upon full or partial termination or expiration of the VCA, this Supplemental Delegation Agreement shall automatically and immediately terminate for the Power Plant(s) for which the VCA has terminated or expired.
3. NNEPA shall immediately, but no later than within 1 business day, verbally notify the U.S. EPA and provide written notification to the U.S. EPA within one week of the full or partial termination or expiration of the VCA.
4. U.S. EPA will notify the public of a partial or full termination of this Supplemental Delegation Agreement through a timely publication of a notice in the Federal Register.
5. In the case of full or partial termination of the Supplemental Delegation Agreement, U.S. EPA will immediately resume the administration of the Part 71 program for the Power Plant(s) for which the Supplemental Delegation Agreement has terminated.
6. Revocation or termination of this Supplemental Delegation Agreement in no way modifies, revokes or terminates the effectiveness of the October 2004 Delegation Agreement for the Part 71 sources covered by that agreement.

#### **V. EFFECTIVE DATE**

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

## **XI. SIGNATURES**

\_\_\_\_\_ Date:  
Wayne Nasti  
Regional Administrator  
U.S. Environmental Protection Agency - Region IX

## **XI. SIGNATURES**

\_\_\_\_\_  
Stephen B. Etsitty  
Director  
Navajo Nation Environmental Protection Agency

Date:

\_\_\_\_\_  
Joe Shirley  
President  
Navajo Nation

Date: