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Detailed Information

Permitting Authority: NNEPA

County: Coconino **State:** Arizona **AFS Plant ID:** 04-005-N0423

Facility: Navajo Generating Station
Document Type: RESPONSE TO COMMENTS

RESPONSES TO COMMENTS

on the Draft Part 71 Permit Renewal to Operate Navajo Generating Station

Permit No. NN-OP-15-06

On September 15, 2015, the Navajo Nation Environmental Protection Agency (NNEPA) had a notice published in the Navajo Times of Window Rock, Arizona, the Lake Powell Chronicle of Page, Arizona, and the Arizona Daily Sun of Flagstaff, Arizona *[please verify if these are still the newspapers with public notice]* stating that Navajo Generating Station (NGS), located 5 miles east of Page, Arizona, had applied for a Part 71 Operating Permit renewal to operate a coal-fired power plant. The notice stated that NNEPA proposed to issue an operating permit and the associated acid rain permit for this source and provided information on how the public could review the proposed permit and other documentation. This notice also includes the information for a public informational session and a public hearing, which occurred on October 15, 2015 at the LeChee Chapter House, LeChee, Arizona. Finally, the notice informed interested parties must submit comments on the draft Part 71 permit or the draft Acid Rain permit by October 26, 2015.

On October 26, 2015, Mr. John Barth (the commenter), on behalf of To' Nizhoni Ani, Black Mesa Water Coalition, and Diné Citizens Against Ruining our Environment (collectively, the tribal conservation organizations), submitted comments on the proposed Part 71 permit. This Response to Comment document provides responses to all of these comments. When permit language is included in the response, bolded language indicates additions to the permit and language with a line through it has been deleted from the permit.

Comment 1:

The commenter stated that the Navajo Nation contracted away its right to regulate the Navajo Generating Station and therefore does not have the authority to issue a Title V permit. Specially, the commenter stated the following:

"The Navajo Nation contracted away its right to regulate NGS in 1969, almost 50 years ago, when it leased the facility to the various NGS owners and operators. Salt River Project Agric. Improvement & Power Dist. v. Lee, 672 F.3d 1176, 1178 n.1 (9th Cir. 2012). Specifically, in leasing NGS, the Navajo Nation contracted that "it will not directly or indirectly regulate or attempt to regulate the Lessees in the . . . operation of the Navajo Generation [sic] Station." Id. The original lease agreement is attached as Exhibit 1. The renewed lease agreement issued in 2012 (attached as Exhibit 2) does not change this waiver of regulatory jurisdiction. See Exhibit 2, Section 4 (provisions of the original lease not related to charges remain unchanged). As a result, the Navajo Nation does not have the authority to issue a Title V permit for NGS because to do so would constitute the direct or indirect regulation of operations of the power plant.

*The Ninth Circuit has previously held that identical language in the lease for the Four Corners Power Plant indicated an "unmistakable waiver" by the Navajo Nation of its right to regulate that facility. Arizona Pub. Serv. Co. v. Aspaas, 77 F.3d 1128, 1130-35 (9th Cir. 1995). The "non-regulation covenant" for the Four Corners Power Plant states, "The Tribe covenants that . . . it will not directly or indirectly regulate or attempt to regulate the Company or the construction, maintenance or operation of the power plant and transmission system by the Company . . ." Id. Furthermore, the Salt River Project, one of the owners/operators of NGS, was recently allowed to proceed in its lawsuit for injunctive relief vis-à-vis NGS regulation. Salt River Project Agric. Improvement & Power Dist., 672 F.3d at 1177. There, the court remanded the case back to the district court, which ordered that the Navajo Nation "may not regulate . . . the operation of NGS." See Salt River Project Agric. Improvement & Power Dist. v. Lee, No. CV-08-08028-PCT-JAT, 2013 WL 321884, at *26 (D. Ariz. Jan. 28, 2013).*

Moreover, and even if the Tribe were to issue a Title V permit, the Navajo Nation's waiver by contract of regulatory jurisdiction over NGS removes the Tribe's power to enforce the permit, if it were violated.

Finally, Section 1(E) of the amendment to the renewal of the lease agreement for NGS (attached as Exhibit 3) provides the Navajo Nation the option to purchase shares of NGS that will be abandoned by the Department of Water and Power of the City of Los Angeles. Due to its future ownership option, the Navajo Nation has no genuine incentive to vigorously regulate the air emissions from NGS. This presents a conflict of interest, and further precludes the Navajo Nation from serving as regulator and issuing a Title V permit. Put another way, USEPA may not allow a potential owner of NGS to regulate itself.

For the above reasons, USEPA, not the Navajo Nation, is the proper entity to regulate NGS and issue the Title V permit to NGS under 40 C.F.R Part 71."

Response to Comment 1:

Contrary to the commenter's assertion, the Navajo Nation has the proper authority to issue and modify a Title V operating permit for NGS. In March 2006, the U.S. EPA determined that the Navajo Nation was eligible for Treatment in the Same Manner as a State ("TAS") for purposes of delegation of the administration of the Clean Air Act (CAA) Title V, 40 CFR Part 71 operating

permit program ~~over~~ for NGS pursuant to CAA § 301(d), 40 CFR Part 49, and via the terms of a Voluntary Compliance Agreement executed in May 2005 between Salt River Project Agricultural Improvement and Power District, on its own behalf and as the operating agent of NGS~~,~~; Arizona Public Service Company, on its own behalf and as the operating agent of the Four Corners Power Plant ("FCPP"); and the Navajo Nation. U.S. EPA also determined that the Navajo Nation satisfied all the criteria for designation as a delegate agency under 40 CFR Part 71. U.S. EPA therefore entered into a delegation agreement with the Navajo Nation for administering the Part 71 program with respect to NGS and FCPP ("Supplemental Delegation Agreement").

In the Supplemental Delegation Agreement, U.S. EPA specifically found, contrary to the commenter's assertions, that the Navajo Nation had the necessary investigative and enforcement authority required by the October 2004 Delegation Agreement that EPA and the Navajo Nation entered into for all other Title V sources on the Nation. Supp. Del. Agt. at 3. VCA Article 9 provides for the Navajo Nation to enforce the Part 71 permit requirements, including the authority to assess civil judicial penalties.

The Ninth Circuit's decisions in *Aspaas* and *Salt River Project* do not alter these conclusions. In *Aspaas*, the court held that the Navajo Nation waived its right to regulate FCPP for employment purposes, finding that "The clear language contained in the Lease Documents, including the Nonregulation Covenant and the subsequent detailed provisions of the Letter Agreement on hiring preferences, demonstrated the parties' understanding that the Navajo Nation would not regulate APS's employment decisions beyond enforcement of the contractual commitments." 77 F.3d at 1135. The court did not consider the Nation's authority to regulate the plants for environmental purposes, a very different question, especially in light of the fact that the parties entered into the lease at issue in 1960, supplemented it in 1966 and amended it in 1985, all long before EPA promulgated the relevant environmental regulations or even had the authority to do so. (The earliest version of the CAA was enacted in 1970, and the CAA TAS provision was not added to the Act until 1990.) Similarly, *Salt River Project* also involved regulation of employment only, in this case at NGS. The lease at issue was approved in 1969, also long before there was any environmental regulation of the type currently at issue. Moreover, the actual holding of the court was limited to whether the Nation was a necessary party to the case.

Finally, the Navajo Nation's option under the NGS lease amendment to purchase shares of NGS that will be abandoned by the Department of Water and Power of the City of Los Angeles does not present a conflict of interest for NNEPA's regulation of NGS under the Part 71 permit. Whether the Nation decides to purchase shares directly or through a tribal enterprise or other authority, NNEPA as the regulatory agency still has full authority to administer the Part 71 permit with respect to NGS. NNEPA is an independent regulatory agency within the Nation's Executive Branch, has the authority to regulate other agencies and departments of the Nation, as well as tribal enterprises, *see* 2 N.N.C. § 1925; and does so whenever required. Similarly, the Navajo Nation CAA applies to all "persons," who therefore are subject to its requirements, including the operating permit program requirements. The term "person" specifically includes "the Nation and any of its agencies, programs, enterprises, companies or political subdivisions." 4 N.N.C. § 1101(A)(49).

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Comment 2:

The commenter stated that the NGS draft permit fails to account for opacity exceedances, as required by the federal implementation plan (FIP). Specially, the commenter stated the following:

"In its quarterly excess emission reports, NGS simply assumes it is exempt from the opacity reporting required by the FIP and by Parts 60 and 75 of the Clean Air Act.

For example, NGS's cover letter to USEPA conveying its third quarter 2011 excess emission reports states, "with respect to the opacity data presented in the report, please note that 6-minute opacity readings are not individually listed during scrubber operations because the saturated stack conditions impedes the accuracy of the readings. The report identifies the block time periods for each unit that the scrubbers were operational and the stacks were saturated, in lieu of reporting the individual 6-minute wet stack readings." Thus, NGS has not been demonstrating continuous compliance with the following opacity emission limits in the FIP, which require:

> *[n]o owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 1, 2, or 3 into the atmosphere exhibiting greater than 20% opacity, excluding condensed uncombined water droplets, averaged over any six (6) minute period [...] [n]o owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 1, 2, or 3 into the atmosphere exhibiting greater than... 40% opacity, averaged over six (6) minutes, during absorber upset transition periods.*

Furthermore, NGS has also failed to report the magnitude of any excess opacity emissions. This is in addition to failing to present any evidence that opacity exceedances are due to "condensed uncombined water droplets," which is what NGS alleges. Finally, the FIP directs NGS to exclude condensed uncombined water droplets from its COMs opacity reading, yet NGS refuses to do so. Instead, NGS simply claims that its wet scrubbers "impede" the accuracy of the readings, but fails to state the magnitude of the alleged interference. The final permit must contain enforceable language requiring NGS to: 1) operate its COMs; 2) submit quarterly COMs reports to EPA; 3) if NGS claims impedance of its COMs, state the magnitude of the interference and exclude that interference from its COMs readings. If NGS claims that the current configuration of air pollution control equipment prevents operation of the COMs, then the final permit should contain enforceable requirements to remedy its inability to operate COMs, such as installation of equipment to dry the flue gas, install a dry slip stream of flue gas in which to operate the COMs, or switch to dry scrubbing to eliminate any water droplet interference.

The permit contains language "excluding condensed uncombined water droplets" from the opacity calculation. See condition II.A.2.d of the draft permit. For the reasons stated below, the EPA should remove this phrase from the permit. The permit also contains the following sentence: "Excess opacity due to condensed water vapor in the stack does not constitute a reportable exceedance; however, the length of time during which water vapor interfered with Continuous Opacity Monitoring System ("COM") readings should be summarized in the 40 CFR 60.7 (c) report." See condition II.A.4.d of the draft permit. For the reasons stated below, NNEPA should also remove this sentence from the permit.

First, we are aware of no documentation for this draft Title V permit proving that "excess opacity" at NGS is "due to" condensed uncombined water vapor. Before including such a broad exemption

from reporting, NGS must first conclusively demonstrate that condensed uncombined water vapor or droplets are causing excess opacity and must conclusively quantify the extent to which such condensed uncombined water droplets are causing such an exceedance of the opacity limits. To our knowledge, no such demonstration has been made and thus the provisions of the permit providing an exclusion of uncombined water vapor should be removed from the permit. Without such conclusive proof, inclusion of the objectionable language in the NGS Title V permit makes that portion of the permit invalid.

Second, during the public comment period on the 2010 FIP, NGS requested that it be exempt from opacity reporting pursuant to 40 C.F.R. 75.14(b). In response, USEPA did not find that an "exemption allowed in part 75 [was] appropriate in this rule." 75 Fed. Reg. 10177. Thus, any language exempting uncombined water vapor from opacity reporting or exceedance calculations should be removed from the permit.

Third, the permit language excluding uncombined water vapor from opacity reporting is in conflict with other federally applicable requirements found in 40 C.F.R. § 60.7, 40 C.F.R. § 72.2 (definition of "continuous opacity monitoring system"), 40 C.F.R. § 74.60, 40 C.F.R. § 75.10, and 40 C.F.R. §75.57(f). Since USEPA has determined that the exemption in 40 C.F.R. 75.14(b) is not appropriate, each of these provisions is an applicable requirement for purposes of the Title V permit. These federally applicable provisions do not contain the language "excluding condensed uncombined water droplets" from opacity calculation or reporting. Moreover, these federally applicable provisions also do not contain the following language:

"Excess opacity due to condensed water vapor in the stack does not constitute a reportable exceedance; however, the length of time during which water vapor interfered with COMs readings should be summarized in the 40 CFR 60.7 (c) report."

Further, uncombined water can be the "only reason for the failure of an air pollution source to meet the 20% opacity limit." 40 C.F.R. §49.124(d)(2). Each boiler at NGS is currently equipped with electrostatic precipitators ("ESP"). ESPs are generally unable to continuously meet 20% opacity limits at coal plants burning western coal, such as NGS. Thus, almost every coal plant in the western United States has switched to baghouses for controlling particulate emissions and limiting opacity. NGS should be required to prove that its antiquated ESPs can continuously meet the 20% opacity limit absent any interference from uncombined condensed water vapor. This should be articulated in the Title V permit.

In addition, other coal plants using wet scrubbers are able to accurately monitor for opacity continuously from their stacks. See Exhibit 4 (Declaration of Dr. Ranajit Sahu, Ph. D.) Dr. Sahu indicated that he is aware of at least three other coal-fired units, which use COMs to measure opacity and which have wet scrubbers, but is reasonably certain that list is not exhaustive. This demonstrates that COMs can be properly designed, located, and used even in units with wet scrubbers. These units include Unit 2 at the Trimble plant located in Trimble County, Kentucky as well as Units 1 and 2 of the Craig station located in Moffat County, Colorado. Additionally, there are technical means of accurately monitoring opacity on a wet stack, including using a stack by-pass, stack dryer, or switching to dry scrubbing.

As such, the permit language identified must be removed from the permit because it is in conflict with other federally applicable requirements, is a mistake, and/or is inaccurate.

In the event NNEPA/USEPA refuses to remove the objectionable language, condition II.A.4.d should be amended to add the word "uncombined" after the word "condensed." See also condition II.A.2.d of the draft permit. As currently written, condition II.A.2.d and condition II.A.4.d are inconsistent. The federal regulations only speak to condensed "uncombined" water vapor, not simply "condensed water vapor. 40 C.F.R. §49.124(d)(2). This distinction is important because "combined" water vapor, or water vapor that is combined with particulate matter, should not be exempt from opacity limitations, which are designed to limit emission of particulate matter. For the reasons discussed herein, the draft Title V permit fails to ensure continuous compliance with the opacity limits and must be amended as requested.

NNEPA/USEPA should either remove the language, as requested, or alternatively, should require that the following language be included in the final permit:

"The owner or operator shall comply with all opacity and COMs provisions found in 40 C.F.R. Part 60 and 40 C.F.R. Part 75, including, but not limited to, 40 C.F.R. § 60.7, 40 C.F.R. § 72.2 (definition of "continuous opacity monitoring system"), 40 C.F.R. § 74.60, 40 C.F.R. § 75.10, and 40 C.F.R. §75.57(f)."

Adding the language specified above to the permit will ensure compliance with all applicable requirements.

As noted above, we are requesting that additional terms and conditions be added to the Title V permit. NNEPA may not add the additional terms and conditions requested herein because to do so would constitute a breach of the leasing provision stating that the Navajo Nation may not "directly or indirectly regulate or attempt to regulate the Lessees in the . . . operation of the Navajo Generation [sic] Station..." As such, USEPA must issue this NGS Title V permit, not NNEPA."

Response to Comment 2:

<Waiting for EPA's response on this compliance issue>

Below are the responses provided by NGS:

NGS has employed COMS to monitor opacity from all three stacks since sulfur dioxide (SO_2) emission controls were installed in 1997, 1998, and 1999. The installation of the SO_2 emission controls (wet flue gas desulfurization scrubbers) introduced droplets into the flue gas, resulting in a mix of water vapor, condensed water droplets and particulates, creating wet stack conditions. At that point, the wet stack conditions impeded the accuracy of the COMS readings since it is impossible for the COMS to distinguish between particulates and water droplet interference. U.S. EPA acknowledged this issue when it exempted units equipped with wet flue gas pollution control systems from the COMS monitoring requirements in Part 75. While 40 CFR Part 75.14(b) exempts units equipped with wet flue gas pollution control systems from the monitoring requirements of Part 75, the NGS COMS are quality assured using Part 75 procedures.

Moving the COMS to another location where there would be no water vapor interference is not a reasonable option for NGS. Locating the COMS upstream of the scrubbers is not possible since NGS relies on the scrubbers for some particulate matter (PM) control. Locating the COMS downstream of the Electrostatic Precipitator (ESP) is not ideal since this location would not provide an accurate representation of the total quantity of PM emitted into the atmosphere. Similarly, unit modifications to create a dry environment in which to operate the COMS also is not a reasonable option for NGS. Reheat modifications or the installation of dry scrubbers to create dry stack conditions would be prohibitively expensive and counter to other environmental objectives.

Regardless, NGS does have an existing requirement to operate its COMS (Title V Permit Condition II.A.3), as well as a requirement to submit quarterly COMS reports (Title V Permit Condition II.A.4.d). Due to the saturated conditions of the stack, the quarterly COMS reports identifies operational time periods for each unit indicating when the scrubbers were operational and the stacks were saturated, as well as the 6-minute averages showing apparent opacity events when the scrubbers are not operating.

The purpose of the opacity monitors is to provide an indication of PM emissions. Annual PM testing has been conducted on each stack since the FIP PM limit was incorporated into the permit in 2011. In 2015, NGS instituted quarterly PM tests, as required by the Mercury and Air Toxics Standards (MATS) (40 CFR Part 63, Subpart UUUUU). Results of annual and quarterly PM tests show compliance with the FIP limit of 0.060 lb/MMBtu and the MATS limit of 0.03 lb/MWh.

As stated in the response to Comment 1, NNEPA does has the authority to regulate and issue the operating permit for NGS.

Comment 3:

The commenter stated that the startup, shutdown, malfunction, and SO_2 absorber module exemptions are not legally nor technically justified and are contrary to applicable requirements. Specially, the commenter stated the following:

"The draft Title V permit contains an exemption from compliance with opacity limitations "during absorber upset transition periods." See condition II.A.2.d of the draft permit. There are several issues with this exemption from compliance.

There is no documentation for this draft permit proving that an exemption from opacity limitations "during absorber upset transition periods" is legally or technically justified at NGS. Before including such a broad exemption from compliance with the opacity limits, NGS must prove the nature of these "absorber upset transition periods" and why an exemption from opacity limits is legally and technically justified. Without such conclusive proof and justification, inclusion of this exemption in the NGS Title V permit is arbitrary and capricious. Since no such demonstration has been made, the "absorber upset transition period" exemption should be removed from the permit. The draft Title V permit also contains exemptions from opacity, particulate limits, NOx and SO2 during periods of "start up" and "shut down." See condition II.A.7.b and II.J.4 of the draft permit.

The draft Title V permit also contains an affirmative defense from exceedances of all emission limits due to any "malfunction." See condition II.A.7.c of the draft permit. As written, NGS would be entitled to the "malfunction" exemption by operation of law if NGS were able to produce certain paperwork ("it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions...").
Inclusion of these blanket "startup," "shutdown," and "malfunction" ("SSM") exemptions in the draft Title V permit is inappropriate. Blanket SSM provisions are illegal and should be removed from Title V permits. See Sierra Club v. EPA, 551 F.3d 1019 (D.C. Cir. 2008)(in the context of Clean Air Act Section 112).

As noted above, we are requesting that additional terms and conditions be added to, and deleted from, the Title V permit related to SSM provisions. NNEPA may not add or delete the terms and conditions requested herein because to do so would constitute a breach of the leasing provision stating that the Navajo Nation may not "directly or indirectly regulate or attempt to regulate the Lessees in the . . . operation of the Navajo Generation [sic] Station..." As such, USEPA must issue this NGS Title V permit, not NNEPA."

Response to Comment 3:

Conditions II.A.2.d, II.A.4.d, and II.A.7.b of the draft Title V permit incorporates the requirement specified in 40 CFR § 49.5513(d)(4), 40 CFR § 49.5513(f)(4) and 40 CFR § 49.5513(i)(2), respectively. These are part of the source specific FIP requirements for NGS. Condition II.J.4 of the draft permit includes the SSM exception specified in 40 CFR § 63.10000(a), which is part of National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired Electric Utility Steam Generating Units (40 CFR 63, Subpart UUUUU). A Title V operating permit must include all applicable federal requirements that are applicable to NGS. NNEPA does not has authorities to revise federal requirements specified in any FIP or NESHAP since they were promulgated by U.S. EPA. Comments related to the FIP requirements for NGS for NESHAP requirements shall be submitted to U.S. EPA directly and will not be addressed in this operating permit renewal action. Therefore, no change has been to the draft permit as the result of this comment. As stated in the response to Comment 1, NNEPA does has the authority to regulate and issue the operating permit for NGS.

Comment 4:

The commenter stated that the draft Title V permit fails to require sufficient periodic monitoring. Specially, the commenter stated the following:

"Permitting authorities must ensure that a Title V permit contain monitoring that assures compliance with the terms and conditions of the permit. See 42 U.S.C. § § 7661c(c) and 70.6(c)(1). Although as a basic matter, Title V permits must require sufficient periodic monitoring when the underlying applicable requirements do not require monitoring (see 40 CFR § 70.6(a)(3)(i)(B)), the D.C. Circuit Court of Appeals has firmly held that even when the underlying applicable requirements require monitoring, permitting authorities must supplement this monitoring if it is inadequate to ensure compliance with the terms and conditions of the permit. As the D.C. Circuit recently explained: [40 CFR § 70.6(c)(1)] serves as a gap-filler. In other words, § 70.6(c)(1)

ensures that all Title V permits include monitoring requirements "sufficient to assure compliance with the terms and conditions of the permit," even when § 70.6(a)(3)(i)(A) and § 70.6(a)(3)(i)(B) are not applicable. This reading provides precisely what we have concluded the Act requires: a permitting authority may supplement an inadequate monitoring requirement so that the requirement will "assure compliance with the permit terms and conditions." See Sierra Club v. EPA, 536 F.3d 673, 680 (D.C. Cir. 2008). In other words, "a monitoring requirement insufficient 'to assure compliance' with emission limits has no place in a permit[.]" Id. at 677.

In this case, the draft Title V permit fails to contain emission limits or monitoring requirements that ensure compliance with underlying opacity and particulate matter limits for the three coal-fired boilers.

The Title V permit should establish pound per hour PM emission limits, ton per year PM emission limits, and pound per million btu PM emission limits. The draft permit must also include enforceable language mandating continuous monitoring of opacity and PM to ensure continuous compliance with these emission limits.

As noted above, we are requesting that addition terms and conditions be added to, and deleted from, the Title V permit related to opacity and PM emissions monitoring. NNEPA may not add or delete the terms and conditions requested herein because to do so would constitute a breach of the leasing provision stating that the Navajo Nation may not "directly or indirectly regulate or attempt to regulate the Lessees in the . . . operation of the Navajo Generation [sic] Station..." As such, EPA must issue this NGS Title V permit, not NNEPA."

Response to Comment 4:

Condition II.A.2.b in draft permit contains a PM emission limit of 0.06 lb/MMBtu (FIP requirement for NGS) and Condition II.J.4.a contains a filterable PM emission limit of 0.03 lb/MMBtu (NESHAP, Subpart UUUUU requirement) for each of the boilers U1, U2, and U3. The pounds per hour emission limit and the pounds per MMBtu limit are interchangeable so there is no need to establish the PM emission limit in pounds per hour. It is not necessary establish tons per year PM limit as the short term limit (lb/MMBtu) is more stringent.

Before the PM CEMS associated with boilers U1, U2, and U3 operate properly, the permittee is subject to the Continuous Assurance Measurements (CAM) requirements (40 CFR Part 64) specified in Condition II.N, which ensures continuous compliance with the PM emission limits for these boilers. NNEPA does not have authorities to mandate the use of PM CEMS as the PM compliance method for NGS. However, NGS is in the process of installing and testing PM CEMS for boilers U1, U2, and U3. NGS expects to complete the installation and calibration process in early 2016. Compliance with the PM emissions limits will be demonstrated by PM CEMS after that.

As for the comments related to opacity limits, the draft permit does include an opacity limit of 20% in Condition II.A.2.d for boilers U1, U2, and U3, and NGS is required to operate COMS to demonstrate compliance with the opacity limit as specified in Condition II.A.3.a (FIP requirement for NGS). NGS has been operating these COMS since 1997. Therefore, no change has been made as

a result of this comment. As stated in the response to Comment 1, NNEPA does has the authority to regulate and issue the operating permit for NGS.

Comment 5:

The commenter stated that the draft permit must contain enforceable requirements for installing and operating PM CEMS to ensure continuous compliance. Specially, the commenter stated the following:

"The Title V permit fails to contain enforceable provisions for installation and operation of PM CEMs to establish continuous compliance with both the PM emission limit and the Mercury and Air Toxics Standards ("MATS"). The draft permit indicates that NGS has installed PM CEMs, but that they are not working properly. The draft permit fails to contain an enforceable deadline for installation and operation of CEMs and reporting of all emissions data to EPA. The draft permit must be revised to include an enforceable deadline for operation of PM CEMs and reporting of all data to EPA.

As noted above, we are requesting that addition terms and conditions be added to, and deleted from, the Title V permit. NNEPA may not add or delete the terms and conditions requested herein because to do so would constitute a breach of the leasing provision stating that the Navajo Nation may not "directly or indirectly regulate or attempt to regulate the Lessees in the . . . operation of the Navajo Generation [sic] Station..." As such, USEPA must issue this NGS Title V permit, not NNEPA."

Response to Comment 5:

As long as NGS could demonstrate compliance with the applicable opacity and PM emission limits specified in FIP and MATS rule under the current control equipment configuration (the use of ESPs), NNEPA does not have authorities to require NGS to replace the existing PM control devices with newer PM control devices, such as baghouses. In addition, both ESPs and baghouses could provide PM control efficiency in the range of 99% to 99.9% according to the control devices fact sheets published by U.S. EPA. Currently, there is no evidence showing NGS is not in compliance with the opacity limit or PM emission limit. Therefore, no change has been made as the result of this comment. As stated in the response to Comment 1, NNEPA does has the authority to regulate and issue the operating permit for NGS.

Comment 6:

The commenter stated that installation of baghouses is necessary to comply with regional haze and clean air toxics rules. Specially, the commenter stated the following:

"Proper COMs reporting is necessary to ensure continuous compliance with opacity and related particulate emission standards. Proper COMs reporting may reveal that NGS is unable to comply with its opacity limits. If NGS is unable to comply with opacity limits, it may have to change its particulate control system from less effective electrostatic precipitators to more efficient baghouses. However, for the reasons stated below, NGS will likely need to convert to baghouses to comply with its regional haze requirements and Clean Air Toxic requirements.

USEPA has issued a site-specific regional haze FIP for NGS. Under the regional haze program, NGS must install Best Available Retrofit Technology ("BART") for particulate matter, SO2, and NOx. It is common knowledge that baghouses constitute BART for particulate matter. Thus, baghouses should have been required as BART to control NGS's particulate matter emissions.[1]

In addition, USEPA recently promulgated its Mercury and Air Toxics Standards Rule ("MATS"), which sets emission limits for mercury and other toxic air pollutants at NGS. It is generally recognized that baghouses are necessary to comply with the new air toxic standards.

As such, baghouses should have been required under several regulatory programs. The Title V permit should impose a compliance schedule for the installation and operation of baghouses at all 3 NGS units.

As noted above, we are requesting that addition terms and conditions be added to, and deleted from, the Title V permit requiring installation and operation of baghouses. NNEPA may not add or delete the terms and conditions requested herein because to do so would constitute a breach of the leasing provision stating that the Navajo Nation may not "directly or indirectly regulate or attempt to regulate the Lessees in the . . . operation of the Navajo Generation [sic] Station..." As such, USEPA must issue this NGS Title V permit, not NNEPA."

Response to Comment 6:

Under MATS rule, the sources could choose to use a particulate matter continuous parametric monitoring system (PM CPMS) or PM CEMS, or to perform quarterly PM emission tests to demonstrate compliance with the PM emission limit (see 40 CFR § 63.10000(c)(1)(iv)). NNEPA does not have authorities to mandate the use of PM CEMS as the PM compliance method for NGS or include an enforceable deadline for the operation of PM CEMS. Therefore, no change has been made as the result of this comment. As stated in the response to Comment 1, NNEPA does has the authority to regulate and issue the operating permit for NGS.

Additional Changes Made by NNEPA:

On May 1, 2015, the D.C. Courts of Appeals vacated the EPA emission standard exemptions for emergency reciprocating internal combustion engines (RICE) that operate up to 100 hours a year for "emergency demand response" (*Delaware Dept. of Nat. Resources and Envtl. Control v. EPA*). This exemption is currently specified in 40 CFR § 63.6640(f)(2) (NEHAP, Subpart ZZZZ) and 40 CFR §§ 60.4211(f)(2) and 60.4243(d)(2) (NSPS, Subparts IIII and JJJJ). Post-decision motions are currently unresolved but may impact Condition II.H.5.b (part of the NSPS, Subpart IIII requirements) and Condition II.L.5.b (part of the NESHAP, Subpart ZZZZ requirements) of the draft permit. NNEPA has added a note to both Conditions II.H.5.b and II.L.5.b as follows to record this court decision:

[1] EPA's failure to require baghouses at BART for particulate matter has been appealed and is pending with the Ninth Circuit. *TNA v. U.S. EPA*, No. 14-73101.

II.H. NSPS for Stationary Compression Ignition Internal Combustion Engines, 40 CFR Part 60, Subpart IIII Requirements

....

5. The operation hours for the emergency fire pump (NGS-120A) shall be limited to the following [40 CFR § 60.4211(f)]:

   a. ...

   b. A maximum of 100 hours per calendar year for maintenance/testing and emergency demand response, as specified below, and for non-emergency situations:

   ...

   [Note: On May 1, 2015, the D.C. Courts of Appeals vacated the EPA emission standard exemptions for emergency reciprocating internal combustion engines that operate up to 100 hours a year for "emergency demand response" (Delaware Dept. of Nat. Resources and Envtl. Control v. EPA). Post-decision motions are currently unresolved but may impact the implementation of this condition.]

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....

5. The operation hours for each of the emergency generators EG2, EG3, and NPG-746 shall be limited to the following [40 CFR § 63.6640(f)]:

   a. ...

   b. A maximum of 100 hours per calendar year for maintenance/testing and emergency demand response, as specified below, and for non-emergency situations specified in Condition II.L.4.c:

   ...

   [Note: On May 1, 2015, the D.C. Courts of Appeals vacated the EPA emission standard exemptions for emergency reciprocating internal combustion engines that operate up to 100 hours a year for "emergency demand response" (Delaware Dept. of Nat. Resources and Envtl. Control v. EPA). Post-decision motions are currently unresolved but may impact the implementation of this condition.]