

Transportation Barriers Compliance Board (Access Board) placed in the docket and on its Web site for public review and comment draft guidelines which address accessibility to and in passenger vessels which are permitted to carry more than 150 passengers or more than 49 overnight passengers. (71 FR 38563, July 7, 2006). In addition, the draft addresses all ferries regardless of size and passenger capacity, and certain tenders which carry 60 or more passengers. The comment period closed on September 5, 2006.

The Board received two requests for an extension of the comment period from the passenger vessel industry to further review the detailed guidelines and provide in-depth comments. As a result, the Board has reopened the time for filing comments by an additional 60 days. The Board believes that the extension of time for comments will give the public a better opportunity to provide input on the draft guidelines.

**James J. Raggio,**  
General Counsel.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

[EPA-R09-OAR-2006-0184; FRL-8218-5]

#### Source-Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to promulgate a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Four Corners Power Plant (FCPP), a coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico.

**DATES:** Any comments on this proposal must arrive by November 6, 2006.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0184, by one of the following methods:

(1) *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the on-line instructions.

(2) *E-mail:* [rosen.rebecca@epa.gov](mailto:rosen.rebecca@epa.gov).

(3) *Mail or deliver:* Rebecca Rosen (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the [www.regulations.gov](http://www.regulations.gov) or e-mail.

[www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Rosen, EPA Region IX, (415) 947-4152, [rosen.rebecca@epa.gov](mailto:rosen.rebecca@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, "we," "us" and "our" refer to EPA.

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## I. Background

### A. Action

In today's action, EPA proposes to promulgate a FIP to establish federally enforceable emissions limitations for sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and total particulate matter (PM) applicable to the FCPP. The FIP also proposes federally enforceable emissions limitations for opacity and control measures for dust.

### B. Facility

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. Based on lease agreements signed in 1960, FCPP was constructed and has been operating on real property held in trust by the Federal government for the Navajo Nation. The facility consists of five coal-fired electric utility steam generating units with a total capacity in excess of 2000 megawatts (MW).

### C. Attainment Status

FCPP is located in the Four Corners Interstate air quality control region (AQCR), which is designated attainment for all criteria pollutants under the Clean Air Act (CAA or "the Act"). See 40 CFR 81.332. The proposed FCPP FIP establishes federally enforceable emissions limitations that are more stringent than, or at least as stringent as, the emissions limitations with which FCPP has historically complied. Therefore, EPA believes that air quality in this area will be positively impacted by this action.

### D. Historical Overview of FCPP FIP Actions

When the Clean Air Act was amended in 1990, Congress included a new provision, Section 301(d), granting EPA authority to treat Tribes in the same manner as States where appropriate. See 40 U.S.C. 7601(d). In 1998, EPA promulgated regulations known as the Tribal Authority Rule (TAR). See 40 CFR parts 9, 35, 49, 50 & 81, 63 FR 7254 (February 12, 1998). EPA's promulgation of the TAR clarified, among other things, that State air quality regulations generally do not, under the Clean Air Act, apply to facilities located anywhere within the

exterior boundaries of Indian reservations. See 63 FR at 7254, 7258 (noting that unless a state has explicitly demonstrated its authority and been expressly approved by EPA to implement Clean Air Act programs in Indian country, EPA is the appropriate entity to implement Clean Air Act programs prior to tribal primacy), *Arizona Public Service Company v. E.P.A.*, 211 F.3d 1280 (DC Cir. 2000), *cert. denied sub nom. Michigan v. E.P.A.*, 532 U.S. 970 (2001) (upholding the TAR), see also *Alaska v. Native Village of Venetie Tribal Government*, 533 U.S. 520, 526 n.1 (1998) (primary jurisdiction over Indian country generally lies with Federal government and tribes, not with states).

Prior to the addition of Section 301(d) and promulgation of the TAR, some States had mistakenly included emissions limitations in their State Implementation Plans (SIPs) which they believed could apply to private facilities operating on adjacent Indian reservations. Such was the case for FCPP. The State Implementation Plan for New Mexico contained emissions limitations purported to apply to FCPP and with which FCPP was complying.

EPA recognized that New Mexico's SIP emissions limits could not apply to FCPP, and on September 8, 1999, EPA proposed a source-specific FIP for the FCPP. See 64 FR 48731 (September 8, 1999). The 1999 proposed FIP stated: "Although the facility has been historically regulated by New Mexico since its construction, the state lacks jurisdiction over the facility or its owners or operations for CAA compliance or enforcement purposes." See 64 FR 48733. EPA intended for the 1999 FCPP FIP to "federalize" the emissions limitations that New Mexico had erroneously included in its State Implementation Plan. *Id.* at 64 FR 48736. EPA received comments on the proposed 1999 FIP but did not take action finalizing the proposal.

Since EPA's 1999 FIP proposal, Arizona Public Service (APS), the operating agent for FCPP, has been in negotiation with the Navajo Nation, EPA Region IX, the Environmental Defense, New Mexico Citizens for Clean Air and Water, Western Resources Advocates, and the National Park Service. Recently, APS agreed to install emission control devices and take other measures to significantly reduce the amount of SO<sub>2</sub> that will be emitted from its various boilers.

Today's FIP proposal, therefore, establishes a significantly lower emission limit for SO<sub>2</sub> than the one set forth in the 1999 proposed FIP, and also promulgates federally enforceable

emissions limits for PM and NO<sub>x</sub>. EPA is also proposing to establish an emissions limitation for opacity and a requirement for control measures to limit dust emissions. NO<sub>x</sub> emissions are also further limited by the Federal Acid Rain Program. FCPP is subject to a plantwide averaging plan limit of 0.62 pounds per million British thermal unit (lbs/MMBtu) for NO<sub>x</sub>.

## II. Basis for Proposed Action

### A. EPA's Authority To Promulgate a FIP in Indian Country

As mentioned above, States generally lack authority to administer Clean Air Act programs in Indian country. See *Alaska v. Native Village of Venetie Tribal Government*, 533 U.S. 520, 526 n.1 (1998). In the preamble to the proposed and final 1998 TAR, EPA discusses generally the legal basis under the CAA by which EPA is authorized to regulate sources of air pollution in Indian country. See 59 FR 43956; 63 FR 7253. EPA concluded that the CAA authorizes EPA to protect air quality throughout Indian country. See 63 FR 7262; 59 FR 43960–43961 (citing, among other things, to CAA sections 101(b)(1), 301(a), and 301(d)). In fact, in promulgating the TAR, EPA specifically provided that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the Act, EPA "[s]hall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) [sic] and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan." See 63 FR at 7273 (codified at 40 CFR 49.11(a)).<sup>1</sup>

Since there is not currently an approved Implementation Plan covering FCPP, a regulatory gap exists with regard to this facility. EPA is thus proposing to remedy this gap with a source-specific FIP. This FIP will establish federally enforceable

<sup>1</sup> In the preamble to the final TAR, EPA explained that it was inappropriate to treat Tribes in the same manner as States with respect to section 110(c) of the Act, which directs EPA to promulgate a FIP within two years after EPA finds a state has failed to submit a complete state plan or within two years after EPA disapproval of a state plan. Although EPA is not required to promulgate a FIP within the two-year period for Tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. See 63 FR 7264–7265.

emissions limits for SO<sub>2</sub>, NO<sub>x</sub>, PM, and opacity, and control measures for dust.

Therefore, in this proposed FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a FIP to remedy an existing regulatory gap under the Act with respect to FCPP to provide for maintenance of the national ambient air quality standards and to advance the goal of visibility protection. Given the magnitude of the emissions from the plant, EPA believes that the proposed FIP provisions are necessary or appropriate to protect air quality on the Reservation.

### B. Relation to Regional Haze Rule

The Clean Air Act defines sources potentially subject to Best Available Retrofit Technology (BART) as major stationary sources with the potential to emit greater than 250 tons or more of any pollutant, and which were placed into operation between 1962 and 1977. See Clean Air Act sections 169(A)(b)(2)(A) and (g)(7). EPA promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. These regulations require all States to submit implementation plans that, among other measures, contain either emission limits representing BART for certain sources constructed between 1962 and 1977, or alternative measures that provide for greater reasonable progress than BART. 40 CFR 51.308(e).

As explained in the regional haze rulemaking, Tribes are not required to submit regional haze implementation plans but they may seek approval to develop a regional haze program under 40 CFR part 49. 64 FR at 35759. EPA noted that pursuant to its authority under section 301(d)(4) of the CAA, EPA will promulgate FIPs within reasonable timeframes to protect air quality in Indian country and take on the responsibility of meeting the requirements of the regional haze rule consistent with the provisions of 40 CFR 49.11(a). *Id.*

EPA notes that there are only two major sources of SO<sub>2</sub> on the Navajo Reservation that are potentially subject to the BART requirements under the regional haze rule at 40 CFR 51.308. As explained in a companion notice published elsewhere in this **Federal Register**, Navajo Generating Station (NGS), is at this time already required to meet an SO<sub>2</sub> limit of 0.1 lb/MMBtu, which requires a greater than 90% reduction in SO<sub>2</sub> emissions through the use of wet scrubbers. The wet scrubbers for NGS are new scrubbers that came

on-line between 1997 and 1999 for the three units at the source.

APS, in partnership with the Navajo Nation, several environmental groups and Federal agencies, conducted a test program to determine if the efficiency of the existing scrubbers at FCPP could be improved from the recent historical level of 72% SO<sub>2</sub> removal to 85%. The test program, which was completed in spring of 2005, was successful and the plant was able to achieve a plant-wide annual SO<sub>2</sub> removal of 88%. The parties involved in the test program have agreed that this rule should propose to require 88% efficiency for the FCPP.

EPA believes that the SO<sub>2</sub> controls proposed today for FCPP are close to or the equivalent of a regional haze BART determination for SO<sub>2</sub>. For example, the BART Guidelines published by EPA in 2005 establish a presumption for the control of SO<sub>2</sub> from uncontrolled large utility boilers of either 95% control or 0.15 lbs/MMBtu, but suggest that for electric generating units with pre-existing post-combustion SO<sub>2</sub> controls of at least 50% removal efficiency, States consider cost effective scrubber upgrades designed to improve the system's overall SO<sub>2</sub> removal efficiency. 70 FR 39104, 39171 (July 6, 2005). The conclusion that the SO<sub>2</sub> controls proposed today are close to or the equivalent of BART takes into consideration not only the BART Guidelines but also the early reductions for Regional Haze that this action will achieve through the modifications to the existing SO<sub>2</sub> scrubbers. As explained in today's companion notice for NGS published elsewhere in this **Federal Register**, EPA previously determined that the SO<sub>2</sub> emission limits in the 1991 FIP for NGS provide for a greater degree of reasonable progress toward the Regional Haze national goal than would BART. See 56 FR 50172. As a result, EPA does not consider it necessary or appropriate to develop a regional haze plan to address the BART requirements under 40 CFR 51.308 for the Navajo Reservation for SO<sub>2</sub>.

This proposal addresses only the necessity or appropriateness of developing a regional haze plan to address the BART requirements for SO<sub>2</sub> for the Navajo Reservation. EPA will evaluate emissions of NO<sub>x</sub>, PM, and other pollutants that contribute to visibility impairment for their impact on regional haze and determine in a future action whether it is necessary and appropriate to develop a regional haze plan to address the BART requirements with respect to these pollutants.

### III. Four Corners Power Plant Facility Description

The FCPP is a 2040 MW net coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. The FCPP consists of two 170 MW net electric generating units, one 220 MW net unit and two 740 MW net units, all of which became operational between 1963 and 1970. The APS is the operating agent for FCPP which is jointly owned by the APS, the Southern California Edison Company, the Salt River Project Agricultural Improvement and Power District (SRP), the Public Service Company of New Mexico, the El Paso Electric Company and the Tucson Electric Power Company. Existing pollution control equipment at FCPP units 4 and 5 includes baghouses for particulate matter control, lime spray towers for SO<sub>2</sub> control, and burners for limiting NO<sub>x</sub> formation. Units 1, 2 and 3 each have venturi scrubbers for particulate matter and SO<sub>2</sub> control, and burners for limiting NO<sub>x</sub> formation. None of these unit's burner designs are the latest technology for NO<sub>x</sub> control.

### IV. Summary of FIP Provisions

#### A. Proposed FIP Standards

1. FCPP's SO<sub>2</sub> emissions are not allowed to exceed 12 percent of the SO<sub>2</sub> produced in the burning of sulfur-bearing coal (averaged over a daily rolling yearly average on a plant-wide basis) and not to exceed 17,900 pounds of total SO<sub>2</sub> per hour averaged over any consecutive three-hour period, on a plant-wide basis.

2. Particulate emissions are not to exceed 0.050 lbs/MMBtu of heat input, as averaged from at least three sampling runs, each at a minimum of 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet.

3. Opacity is limited to 20%, averaged over a six-minute period, for Units 4 and 5. The opacity limit for Units 4 and 5 allows for one six-minute period per hour of not more than 27 percent opacity, excluding water vapor. The opacity limit is not being applied to Units 1, 2, and 3. The scrubbers currently in operation on Units 1, 2, and 3 were designed for control of particulate matter, and were later redesigned to also control SO<sub>2</sub>. However, FCPP cannot currently meet a continuous opacity limit of 20 percent at Units 1, 2, and 3. EPA is proposing that FCPP design and enact a plan to monitor operating parameters such as pressure drop and scrubber liquid flow for the scrubbers. This will yield information about continuous proper operation of the scrubbers for

particulate control. This information could then be used to determine appropriate parameters, which could be included in FCPP's Title V permit as indicators for good particulate matter control practice. EPA requests comment on this proposal, including whether an opacity standard of 20% or 40% could be applied to Units 1, 2, and 3. It should be noted that even if this regulation adopts an opacity limit, continuous opacity monitors would not be required since the stack is continuously wet from water vapor from the scrubbers.

4. Opacity is limited to 20 percent averaged over a six minute period for dust from emissions associated with coal transfer and storage and other dust-generating activities. APS is required to submit a description of the dust control measures.

5. FCPP's nitrogen oxide emissions are not allowed to exceed 0.85 lbs/MMBtu of input for Units 1 and 2, and 0.65 lbs/MMBtu of input for Units 3, 4, and 5, averaged over any successive 30 boiler operating day period; nor shall they exceed 335,000 lb per 24-hour period on a plant-wide basis. When any one unit is not operating, the limits are reduced by 1542 pounds per hour for units 1, 2, and 3, and by 4667 pounds per hour for units 4 and 5.

#### B. Other Requirements

1. All periods of excess emissions will be treated as violations of the emission limitation. This rule does, however, provide an affirmative defense to enforcement actions for penalties brought for excess emissions that arise during certain malfunction episodes. As explained in EPA's excess emissions policy,<sup>2</sup> affirmative defenses must be restricted to malfunctions that are sudden, unavoidable, and unpredictable. In addition, all possible steps must have been taken to minimize excess emissions. The rule accordingly requires an owner or operator to meet several conditions to qualify for an affirmative defense. An affirmative defense is not available if, during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

2. APS will develop a plan to monitor, record and report operating parameters indicative of good operation of the scrubbers for control of particulate matter on Units 1, 2, and 3.

<sup>2</sup> September 20, 1999, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (the Excess Emissions Policy).

### C. Compliance Schedule

The EPA proposes that the requirements contained in this proposal become effective upon promulgation of these regulations, except where specified otherwise.

### V. Solicitation of Comments

The EPA solicits comments on all aspects of today's proposal to promulgate a FIP to regulate air emissions from FCPP. Interested parties should submit comments to the address listed in the front of this proposed rule. Public comments postmarked by November 6, 2006 will be considered in the final action taken by EPA.

### VI. Administrative Requirements

#### A. Executive Order 12866

Under Executive Order (E.O.) 12866, 58 FR 51735 (October 4, 1993), all "regulatory actions" that are "significant" are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A "regulatory action" is defined as "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including \* \* \* notices of proposed rulemaking." A "regulation or rule" is defined as "an agency statement of general applicability and future effect, \* \* \*."

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only a single, specifically named facility and is therefore not a rule of general applicability. Thus, it is not a "regulatory action" under E.O. 12866.

#### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The Federal implementation plan for the Four Corners Power Plant proposed today does not impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (DC Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Therefore, pursuant to 5 U.S.C. 605(b), EPA

certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

#### C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain "federal mandates" that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Regional Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no Federal mandates on state, local or tribal governments, because it will not impose any additional enforceable duties on any of these entities. EPA further has determined that the proposed FIP is not likely to result in the expenditure of \$100 million or more by the private sector in any one year. Although the proposed FIP imposes enforceable duties on an entity in the private sector, the costs are expected to be minimal. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small

governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not apply to the proposed FIP. Nonetheless, EPA worked closely with representatives of the Tribe in the development of today's proposed action.

#### D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*." 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

#### E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The FCPP FIP is not subject to Executive Order 13045 because it implements previously promulgated health or safety-based Federal standards. Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as that term is defined in E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation.

#### F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a

mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and EPA's position supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

As stated above, the proposed FIP will not create a mandate on state, local or tribal governments because it will not impose any additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nonetheless, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13175, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on

matters that significantly or uniquely affect their communities."

The proposed FIP does not impose substantial direct compliance costs on the communities of Indian tribal governments. The proposed FIP imposes obligations only on the owner or operator of FCCP. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this rule.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12 (10 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable voluntary consensus standards (VCS). For the measurement of the sulfur in the coal for calculating the efficiency of the SO<sub>2</sub> scrubbers for FCCP, EPA proposes to require use of American Society of Testing and Materials (ASTM) standards. FCCP would have the ability to choose an applicable ASTM standard for both the coal sample collection and the sulfur in coal analysis.

In regard to the remaining measurement needs as listed below, there are a number of voluntary consensus standards that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR part 60, Appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would

then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

*Particulate Matter Emissions*—EPA Methods 1 through 5.

*Opacity*—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring.

*SO<sub>2</sub>*—EPA Method 6C and Performance Specification 2 for Continuous SO<sub>2</sub> Monitoring.

*NO<sub>x</sub>*—EPA Method 7E and Performance Specification 2 for Continuous NO<sub>x</sub> Monitoring and Performance Specification 6 for Flow Monitoring.

**List of Subjects in 40 CFR Part 49**

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 30, 2006.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

**PART 49—[AMENDED]**

1. The authority citation for part 49 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Part 49 is proposed to be amended by adding § 49.21 to read as follows:

**§ 49.21 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.**

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the coal burning equipment designated as Units 1, 2, 3, 4, and 5 at the Four Corners Power Plant ("the Plant") on the Navajo Nation located in the Four Corners Interstate Air Quality Control Region (see 40 CFR 81.121).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon the effective date of this promulgation unless otherwise indicated by compliance dates contained in specific provisions.

(c) *Definitions.* For the purposes of this section:

(1) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(2) *Air pollution control equipment* includes baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

(3) *Daily average* means the arithmetic average of the hourly values measured in a 24-hour period.

(4) *Excess emissions* means the emissions of air contaminants in excess of an applicable emissions limitation or requirement.

(5) *Heat input* means heat derived from combustion of fuel in a Unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be in accordance with 50 CFR part 75.

(6) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(7) *Owner or Operator* means any person who owns, leases, operates, controls, or supervises the Plant or any of the coal burning equipment designated as Units 1, 2, 3, 4, or 5 at the Plant.

(8) *Oxides of nitrogen (NO<sub>x</sub>)* means the sum of nitric oxide (NO) and nitrogen dioxide (NO<sub>2</sub>) in the flue gas, expressed as nitrogen dioxide.

(9) *Plant-wide basis* means total stack emissions of any particular pollutant from all coal burning equipment at the Plant.

(10) *Regional Administrator* means the Regional Administrator of the Environmental Protection Agency (EPA) Region 9 or his/her authorized representative.

(11) *Shutdown* means the cessation of operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, shutdown begins when the unit drops below 40 MW net load with the intent to remove the unit from service. For Units 4 or 5, shutdown begins when the unit drops below 300 MW net load with the intent to remove the unit from service.

(12) *Startup* means the setting into operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, startup ends when the unit reaches 40 MW net load. For Units 4 or 5, startup ends when the unit reaches 400 MW net load.

(13) *24-hour period* means the period of time between 12:01 a.m. and 12 midnight.

(d) *Emissions Standards and Control Measures.*

(1) *Sulfur Dioxide.* No owner or operator shall discharge or cause the discharge of sulfur dioxide (SO<sub>2</sub>) into the atmosphere in excess of

(i) 12.0% of that which is produced by the Plant's coal burning equipment, determined each day on a yearly plant-wide basis; and

(ii) 17,900 pounds of total SO<sub>2</sub> emissions per hour averaged over any consecutive three (3) hour period, determined on a plant-wide basis.

(2) *Particulate Matter.* No owner or operator shall discharge or cause the discharge of particulate matter from any coal burning equipment into the atmosphere in excess of 0.050 pounds per million British thermal unit (lb/MMBtu) of heat input (higher heating value), as averaged from at least three sampling runs, each at minimum 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet.

(3) *Dust.* Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of this section, the owner or operator shall submit to the Regional Administrator a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, fly ash handling and storage, and road sweeping activities. Each owner or operator shall not emit dust with an opacity greater than 20% from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.

(4) *Opacity.* No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 4 and 5 into the atmosphere exhibiting greater than 20% opacity, excluding water vapor, averaged over any six (6) minute period, except for one six (6) minute period per hour of not more than 27% opacity, excluding water vapor.

(5) *Oxides of nitrogen.* No owner or operator shall discharge or cause the discharge of NO<sub>x</sub> into the atmosphere

(i) From either Unit 1 or 2 in excess of 0.85 lb/MMBtu of heat input per unit, and from either Units 3, 4, or 5 in excess

of 0.65 lb/MMBtu of heat input per unit averaged over any successive thirty (30) boiler operating day period;

(ii) In excess of 335,000 lb per 24-hour period when coal burning equipment is operating, on a plant-wide basis; for each hour when coal burning equipment is not operating, this limitation shall be reduced. If the unit which is not operating is Unit 1, 2, or 3, the limitation shall be reduced by 1,542 lb per hour for each unit which is not operating. If the unit which is not operating is Unit 4 or 5, the limitation shall be reduced by 4,667 lb per hour for each unit which is not operating.

(e) *Testing and Monitoring.* Upon completion of the installation of continuous emissions monitoring systems (CEMS) software as required in this section, compliance with the emissions limits set for SO<sub>2</sub> and NO<sub>x</sub> shall be determined by using data from a CEMS unless otherwise specified in paragraphs (e)(2) and (e)(4) of this section. Compliance with the emissions limit set for particulate matter shall be tested annually, or at such other time as requested by the Regional Administrator, based on data from testing conducted in accordance with 40 CFR part 60, Appendix A, Methods 1 through 5, or any other method receiving prior approval from the Regional Administrator. Compliance with the emissions limits set for opacity shall be determined by using data from a Continuous Opacity Monitoring System (COMS) except during saturated stack conditions (condensed water vapor). If the baghouse is operating within its normal operating parameters, the baghouse is not fully closed, and a high opacity reading occurs, it will be presumed that the occurrence was caused by saturated stack conditions and shall not be considered a violation.

(1) The owner or operator shall maintain and operate CEMS for SO<sub>2</sub>, NO or NO<sub>x</sub>, a diluent and, for Units 4 and 5 only, COMS, in accordance with 40 CFR 60.8 and 60.13, and Appendix B of 40 CFR Part 60. Within six (6) months of promulgation of this section, the owner or operator shall install CEMS and COMS software which complies with the requirements of this section. The owner or operator of the Plant may petition the Regional Administrator for extension of the six (6) month period for good cause shown. Completion of 40 CFR part 75 monitor certification requirements shall be deemed to satisfy the requirements under 40 CFR 60.8 and 60.13 and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75, and all reports required there under shall be submitted

to the Regional Administrator. The owner or operator shall provide the Regional Administrator notice in accordance with 40 CFR 75.61.

(2) *Sulfur Dioxide*. For the purpose of determining compliance with this section, the sulfur dioxide inlet concentration (in lb/MMBtu) shall be calculated using the daily average percent sulfur and Btu content of the coal combusted. The inlet sulfur concentration and Btu content shall be determined in accordance with American Society for Testing and Materials (ASTM) methods or any other method receiving prior approval from the Regional Administrator. A daily fuel sample shall be collected using the coal sampling tower conforming to the ASTM specifications. The analyses shall be done on the daily sample using ASTM methods or any other method receiving prior approval from the Regional Administrator.

(i) The inlet sulfur dioxide concentration shall be calculated using the following formula:

$$I_s = 2(\%S_f)/GCV \times 10^4 \text{ English units}$$

Where:

$I_s$  = sulfur dioxide inlet concentrations in pounds per million Btu;

$\%S_f$  = weight percent sulfur content of the fuel; and

GCV = Gross calorific value for the fuel in Btu per pound.

(ii) The total pounds of SO<sub>2</sub> generated by burning the coal shall be calculated by multiplying the SO<sub>2</sub> inlet concentration by the daily total heat input determined by the 40 CFR part 75 acid rain monitoring. This will determine the pounds of SO<sub>2</sub> produced per day. The SO<sub>2</sub> emitted from the stacks shall be determined by adding the daily SO<sub>2</sub> emissions from each stack as determined by the 40 CFR part 75 acid rain monitors.

Compliance with the emission limit shall be determined for each day by adding that day's SO<sub>2</sub> emissions and that day's SO<sub>2</sub> produced to the previous 364 days and then dividing the 365 days of emissions by the 365 days of SO<sub>2</sub> produced. Compliance is demonstrated if this fraction, converted to a percent, is equal to or less than 12.0%. The data from the 40 CFR part 75 monitors shall not be bias adjusted. Missing hours of data shall be calculated by averaging the last prior valid hourly data with the next valid hour after the data gap.

(3) *Particulate Matter*. Particulate matter emissions shall be determined by averaging the results of three test runs. Each test run shall be at least sixty (60) minutes in duration and shall collect a minimum volume of thirty (30) dry

standard cubic feet. Particulate matter testing shall be conducted annually and at least six (6) months apart, with the equipment within 90% of maximum operation in accordance with 40 CFR 60.8 and Appendix A to 40 CFR part 60. The owner or operator shall submit written notice of the date of testing no later than 21 days prior to testing. Testing may be performed on a date other than that already provided in a notice as long as notice of the new date is provided either in writing or by telephone or other means acceptable to the Regional Administrator, and the notice is provided as soon as practicable after the new testing date is known, but no later than 7 days (or a shorter period as approved by the Regional Administrator) in advance of the new date of testing.

(4) *Oxides of nitrogen*. The total daily plant-wide oxides of nitrogen emissions in pounds of NO<sub>2</sub> per day shall be calculated using the following formula:

$$TE = \sum_{i=1}^n \sum_{j=1}^m (E_{ij} \times H_{ij})$$

Where:

TE = total plant-wide nitrogen dioxide emissions (lb NO<sub>2</sub>/day);

$E_{ij}$  = hourly average emissions rate of each unit (lb NO<sub>2</sub>/MMBtu);

$H_{ij}$  = hourly total heat input for each unit (MMBtu);

$n$  = the number of units of coal burning equipment operating during the hour;

$m$  = the number of operating hours in a day, from midnight to midnight.

(5) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO<sub>2</sub>, NO<sub>x</sub>, and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. The one-hour averages shall be calculated using these data points. At least two data points must be used to calculate the one-hour averages. When emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in at least 22 out of 30 successive boiler operating days. NO<sub>x</sub> emissions rates and quantities shall be reported as NO<sub>2</sub> concentrations.

For reporting purposes, when CEMS data is not available because of malfunctions or other reasons, the unavailable data will be replaced with a calculated value based on the average of the last valid data point and the next valid data point for purposes of calculating total plant-wide emissions.

(6) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one set of filters shall be on site at all times.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under Section 114 of the Clean Air Act, 42 U.S.C. 7414, and enforce against any violation.

(8) In order to provide reasonable assurance that the scrubbers for control of particulate matter from Units 1, 2, and 3 are being maintained and operated in a manner consistent with good air pollution control practice for minimizing emissions, the owner or operator shall comply with the following provisions:

(i) The owner or operator shall develop a plan to monitor, record, and report parameter(s) indicative of the proper operation of the scrubbers to provide a reasonable assurance of compliance with the particulate matter limits in paragraph (d)(2) of this section. The owner or operator shall submit this plan to the Regional Administrator no later than sixty (60) days after the effective date of this FIP. The owner or operator shall implement this plan within 30 days of approval by the Regional Administrator and shall commence reporting the data generated pursuant to the monitoring plan in accordance with the schedule in paragraph (e)(8)(v) of this section. If requested by the Regional Administrator, this plan shall be revised and submitted to the Regional Administrator for approval within sixty (60) days of the request. The revised plan shall be implemented within sixty (60) days of the Regional Administrator's approval.

(ii) In the event that the owner or operator is unable to develop the plan required in paragraph (e)(8)(i) of this section due to technical difficulties, fails to submit the plan within sixty (60) days of the effective date of this FIP, or the Regional Administrator disapproves the plan, the owner or operator shall install and operate devices to measure the pressure drop across each scrubber module and the total flow of scrubbing liquid to the venturi section of each scrubber module. The data from these instruments shall be monitored and recorded electronically. A minimum of

one reading every 15 minutes shall be used to calculate an hourly average which shall be recorded and stored for at least a five-year period. The owner or operator shall report in an electronic format either all hourly data, or one-hour averages deviating by more than 30% from the levels measured during the last particulate matter stack test that demonstrated compliance with the limit in this section. The owner or operator shall implement this requirement no later than one hundred twenty (120) days after the effective date of this FIP if it failed to submit the plan within sixty (60) days after the effective date of this FIP; or no later than 60 days after the Regional Administrator's disapproval of the plan.

(iii) The monitoring required under paragraphs (e)(8)(i) and (e)(8)(ii) of this section shall apply to each Unit at all times that the Unit is operating, except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments). A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(iv) The owner or operator may petition the Regional Administrator for an extension of the sixty (60) day deadline. Such extension shall be granted only if the owner or operator demonstrates to the satisfaction of the Regional Administrator that:

(A) The delay is due to technical infeasibility beyond the control of the owner or operator; and

(B) The requested extension, if granted, will allow the owner or operator to successfully complete the plan.

(v) The owner or operator shall submit to the Regional Administrator reports of the monitoring data required by this section quarterly. The reports shall be postmarked within 30 days of the end of each calendar quarter.

(vi) The owner or operator shall develop and document a quality assurance program for the monitoring and recording instrumentation. This program shall be updated or improved as requested by the Regional Administrator.

(vii) In the event that a program for parameter monitoring on Units 1, 2, and 3 is approved pursuant to the Compliance Assurance Monitoring rule, 40 CFR part 64, such program will supersede the provisions contained in paragraph (e)(8) of this section.

(f) *Reporting and Recordkeeping Requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871-7692, (928) 871-7996 (facsimile), and to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, (415) 972-3990, (415) 947-3579 (facsimile). For each unit subject to the emissions limitation in this section and upon completion of the installation of CEMS and COMS as required in this section, the owner or operator shall comply with the following requirements:

(1) For each emissions limit in this section, comply with the notification and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d).

(2) For each day, provide the 365-day percent SO<sub>2</sub> emitted, the total SO<sub>2</sub> emitted that day, and the total SO<sub>2</sub> produced that day. List the number of hours of substitute data used for each of the 5 units during that day.

(3) Furnish the Regional Administrator with reports describing the results of the annual particulate matter emissions tests postmarked within sixty (60) days of completing the tests. Each report shall include the following information:

(i) The test date;

(ii) The test method;

(iii) Identification of the coal burning equipment tested;

(iv) Values for stack pressure, temperature, moisture, and distribution of velocity heads;

(v) Average heat input;

(vi) Emissions data, identified by sample number, and expressed in pounds per MMBtu;

(vii) Arithmetic average of sample data expressed in pounds per MMBtu; and

(viii) A description of any variances from the test method.

(4) *Excess Emissions Report.* (i) For excess emissions (except in the case of saturated stack conditions), the owner or operator shall notify the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator by telephone or in writing within one business day ("initial notification"). A complete written report of the incident shall be submitted to the Navajo Environmental

Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator within ten (10) working days of the initial notification. This notification should be sent to the Director, Navajo Environmental Protection Agency, by mail to: P.O. Box 339, Window Rock, Arizona 86515, or by facsimile to: (928) 871-7996 (facsimile), and to the Regional Administrator, U.S. Environmental Protection Agency, by mail to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, by facsimile to: (415) 947-3579 (facsimile), or by e-mail to: [r9.aeo@epa.gov](mailto:r9.aeo@epa.gov). The complete written report shall include:

(A) The name and title of the person reporting;

(B) The identity and location of the Plant and Unit(s) involved, and the emissions point(s), including bypass, from which the excess emissions occurred or are occurring;

(C) The time and duration or expected duration of the excess emissions;

(D) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(E) The nature of the condition causing the excess emissions and the reasons why excess emissions occurred or are occurring;

(F) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction;

(G) For an opacity exceedance, the 6-minute average opacity monitoring data greater than 20% for the 24 hours prior to and during the exceedance for Units 4 and 5; and

(H) The efforts taken or being taken to minimize the excess emissions and to repair or otherwise bring the Plant into compliance with the applicable emissions limit(s) or other requirements.

For this reporting requirement, excess opacity due to saturated stack conditions is exempted.

(ii) If the period of excess emissions extends beyond the submittal of the written report, the owner or operator shall also notify the Regional Administrator in writing of the exact time and date when the excess emissions stopped. Compliance with the excess emissions notification provisions of this section shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

(g) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the Plant including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the Plant. With regard to the operation of the baghouses on Units 4 and 5, placing the baghouses in service before coal fires are initiated will constitute compliance with this paragraph. (If the baghouse inlet temperature cannot achieve 185 degrees Fahrenheit using only gas fires, the owner or operator will not be expected to place baghouses in service before coal fires are initiated; however, the owner or operator will remain subject to the requirements of this paragraph.)

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether the Plant would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard in the plan.

(2) During periods of startup and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, 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:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment or of a process to operate in a normal or usual manner;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were taken in an expeditious fashion to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[FR Doc. E6-15097 Filed 9-11-06; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

[EPA-R09-OAR-2006-0185; FRL-8218-6]

#### Source-Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to promulgate a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Navajo Generating Station (NGS), a coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona.

**DATES:** Any comments on this proposal must arrive by November 6, 2006.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0185, by one of the following methods:

(1) *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the on-line instructions.

(2) *E-mail:* [rosen.rebecca@epa.gov](mailto:rosen.rebecca@epa.gov).

(3) *Mail or deliver:* Rebecca Rosen (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Rosen, EPA Region IX, (415) 947-4152, [rosen.rebecca@epa.gov](mailto:rosen.rebecca@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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