

alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained APU failure and damage to the airplane, accomplish the following:

(a) For APUs with load compressor impellers, part number (P/N) 3822270-4, at the next shop visit, or within 6 months after the effective date of this AD, whichever occurs first, accomplish either of the following:

(1) Install an external load compressor containment shield in accordance with AlliedSignal Inc. Service Bulletins (SBs) No. GTCP36-49-7471, dated April 20, 1999, GTCP36-49-7472, dated March 31, 1999, and GTCP36-49-7473, dated March 31, 1999, as applicable; or

(2) Install load compressor impeller, P/N 3822270-5.

(b) For APUs with load compressor impellers, P/N 3822270-5, install an external load compressor containment shield within 6 months after the effective date of this AD, or prior to exceeding 26,000 cycles-since-new (CSN), whichever occurs later, in accordance with AlliedSignal Inc. SBs No. GTCP36-49-7471, dated April 20, 1999, GTCP36-49-7472, dated March 31, 1999, and GTCP36-49-7473, dated March 31, 1999, as applicable.

(c) Operators cannot operate with a load compressor, P/N 3822270-5, installed, past 26,000 cycles unless they have installed an improved external containment shield.

(d) For the purpose of this AD, a shop visit is defined as when the APU is inducted into a shop for any reason.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on September 1, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99-23284 Filed 9-7-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[FRL-6432-8]

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: Comments must be received on or before October 8, 1999.

ADDRESSES: Written comments should be addressed to: Douglas K. McDaniel, Air Division (AIR-8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Division (AIR-8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1246.

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I. Background

A. Action

In today's action, EPA proposes to federalize standards from the Arizona state implementation plan (SIP) and permits issued pursuant to the SIP, applicable to the Navajo Generating Station. Where necessary, EPA's proposed emission standards and associated requirements modify those extracted from Arizona's regulatory programs to ensure comprehensive emission control and federal consistency.

B. Facility

NGS is a privately owned and operated coal-fired power plant located on the Navajo Indian Reservation. Through lease agreements, the facility utilizes real property held in trust by the federal government for the Navajo Nation. The facility operates three units, each with a capacity of 750 megawatts (MW).

NGS is located just east of Page, Arizona, approximately 135 miles north of Flagstaff. Operations at the facility produce emissions of sulfur dioxide (SO₂), nitrogen dioxide (NO_x) and particulate matter (PM).

C. Attainment

NGS is located in the Northern Arizona Intrastate air quality control region (AQCR), which is designated attainment for all criteria pollutants under the Clean Air Act (CAA or "the Act"). 40 CFR 81.303. As the NGS proposed FIP merely federalizes the regulatory scheme with which the plant has been complying, EPA believes that air quality, and hence the attainment status, in this area will not be negatively impacted by this action.¹

D. Visibility

Sections 169A and 110(c) of the Act require EPA to take appropriate measures to remedy certified visibility impairments in mandatory Class I areas where the visibility impairment is reasonably attributed to a specific source. On September 5, 1989, EPA preliminarily attributed a significant portion of wintertime visibility impairment in the Grand Canyon National Park to NGS (54 FR 36948). On October 3, 1991, EPA revised the visibility FIP for the state of Arizona to include an SO₂ emission limit for NGS to remedy visibility impairment in the

¹ A different conclusion may be reached by EPA, however, if, for example, there were evidence that the source to be regulated by the FIP is causing or contributing to violations of the applicable NAAQS, or was located in an area that is designated nonattainment for such NAAQS.

Grand Canyon National Park. 56 FR 50172, 40 CFR 52.145. Under the visibility FIP, NGS is required to phase-in compliance with the SO₂ emission limit, by unit, in 1997, 1998, and 1999.

The visibility FIP is not being amended or changed by today's action. The visibility FIP remains in full force and effect and this rulemaking does not provide an opportunity for public comment or judicial review of EPA's earlier actions promulgating the visibility FIP.

E. Jurisdictional Issue

Historically, emissions of air pollutants from the NGS facility have been regulated under provisions of the Arizona air pollution control program, in accordance with the Arizona SIP. However, States are generally precluded from enforcing their civil regulatory programs on Tribal lands, absent an explicit Congressional authorization or State-Tribal agreement. See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

Both the Navajo Nation and members of the regulated community have queried EPA concerning the jurisdictional issue of who has authority under the Act to regulate air emissions from NGS. Upon review of the circumstances surrounding the location and operation of NGS on the Navajo Indian Reservation, EPA concluded that jurisdiction under the Act over this facility lies with EPA and the Navajo Nation. EPA met with representatives of the State of Arizona, the Navajo Nation and NGS to discuss this jurisdictional issue. All parties have expressed agreement with this conclusion.

II. Basis for Proposed Action

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

EPA's conclusion that CAA jurisdiction over NGS lies with EPA and the Navajo Nation necessarily leads to the conclusion that 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 in essence federalize the Arizona SIP and permit requirements with which the facility has been complying.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as states. See CAA sections 301(d)(1) and (2). EPA promulgated the final rule under section

301(d) of the Act, entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998. 63 FR 7254. The rule is generally referred to as the "Tribal Authority Rule" or "TAR".

In the preamble to the proposed² and final rule, EPA discusses generally the legal basis under the CAA by which EPA and tribes are authorized to regulate sources of air pollution in Indian country. EPA concluded that the CAA constitutes a statutory grant of jurisdictional authority to Indian tribes that allows them to develop air programs for EPA approval in the same manner as states. 63 FR at 7254-7259; 59 FR 43958-43960.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country, including on fee lands. See 63 FR 7262; 59 FR 43960-43961 (citing 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

"shall 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) 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." 63 FR at 7273 (codified at 40 CFR 49.11(a)).³

It is EPA's policy to aid tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that just as it required many years to develop state and federal programs to cover lands subject to state jurisdiction, it will also require time to develop tribal and federal programs to cover reservations and other lands subject to tribal jurisdiction. 59 FR 43961.

The Navajo Nation has expressed a strong interest in seeking authority

under the TAR to regulate sources of air pollution located on the Reservation under the Clean Air Act. Based on discussions with the Tribe, however, EPA believes that it will be at least several months before the Tribe will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, when they do so, the Tribe intends to build its capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. The Tribe has advised EPA that it continues to support EPA's efforts to impose such controls on NGS as are necessary to ensure continued compliance with the substantive requirements of the Arizona SIP and permits, notwithstanding the recent promulgation of the TAR.

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 federal implementation plan in order to remedy an existing regulatory gap under the Act with respect to NGS. Although the facility has been historically regulated by Arizona for the most part since its construction, the state lacks jurisdiction over the facility or its owners or operators for CAA compliance or enforcement purposes. The Tribe has not submitted a tribal implementation plan to address emissions from NGS and has indicated to EPA that it prefers to have EPA address the emissions from NGS at this time. Since the Navajo Nation does not presently have a federally approved TIP, in the absence of a comprehensive FIP the applicable regulatory requirements arising under state law would not be enforceable. EPA's FIP will federalize requirements contained in the Arizona SIP that were applicable to NGS and permits issued pursuant to the SIP. Given the magnitude of the emissions from the plant, EPA believes that the proposed FIP provisions are both necessary and appropriate to protect air quality on the Reservation.

B. Relation to Tribal Authority Rule

As discussed above, under section 301(d) of the Act, a tribe may develop and implement one or more of its own air quality programs under the Act through a Tribal Air Program. On February 12, 1998, EPA promulgated regulations under Section 301(d) of the Act which provide the framework for tribes to obtain authority to administer federally-approved and federally-enforceable programs under the Act, including tribal implementation plans. See 59 FR 43956, August 25, 1994

² See 59 FR 43956 (August 25, 1994).

³ In the preamble to the final TAR, EPA explained that it believed 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.

(proposed rule) and 63 FR 7254, February 12, 1998 (final rule).

The Navajo Nation now has the option of assuming responsibility for the development and implementation of federally enforceable air quality programs under the Clean Air Act. Until a federally approved Navajo Nation TIP is in place with regulations which cover NGS, however, EPA has exclusive jurisdiction to regulate the source under the Act. Once final, the regulations proposed today will remain in effect until a TIP governing NGS is in place and the FIP is withdrawn.

III. Navajo Generating Station—Facility Description

The NGS is a 2250 MW coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona. The NGS is a baseload generating station consisting of three 750 MW units which became operational between 1974 and 1976. The Salt River Project (SRP) is the operating agent for NGS which is jointly owned by SRP, the Los Angeles Department of Water and Power, the Arizona Public Service, the Nevada Power Company, and the Tucson Electric Power Company. Existing pollution control equipment at NGS includes electrostatic precipitators for PM removal and specific burners designed for NO_x control. Furthermore, the visibility FIP for the State of Arizona includes an SO₂ emission limit for the NGS. NGS installed limestone wet scrubbers on each unit to reduce SO₂ emissions by 90%. These scrubbers are now fully operational. Compliance with the SO₂ emission limit in the visibility FIP will be determined on a plant-wide annual rolling average basis (see 40 CFR 52.145).

IV. Summary of FIP Provisions

A. State Standards

The standards in this FIP proposal are generally based on the state standards under which the facility has been operating (NGS must also continue to comply with all other applicable federal requirements). These standards, derived from the Arizona SIP and operating permit, are summarized as follows:

1. Particulate matter emissions were limited to 17.0 times $Q^{0.4320}$ pounds per hour where Q is million BTU per hour of heat input to the boilers.

2. Opacity was limited to 40 percent.

3. Sulfur oxides emissions were limited to one pound per million BTU, per unit, three-hour average.

B. Visibility FIP

Under the visibility FIP, SO₂ emissions are limited to 0.1 pounds per

million BTU on a plant-wide rolling annual basis, and scrubbers must be installed and operable on all three units by August 19, 1999. The scrubbers were installed and operating on the last of the three units in February, 1999.

The SO₂ scrubbers will substantially lower the SO₂ emissions from Navajo Generating Station. When the scrubbers are operating, SO₂ emissions will be less than .1 pounds per million BTU. The visibility FIP standards are an annual average, as this was determined to be protective of visibility resources in the Grand Canyon.

The visibility FIP is not being amended or changed by today's action. The visibility FIP remains in full force and effect and this rulemaking does not provide an opportunity for public comment or judicial review of EPA's earlier actions promulgating the visibility FIP.

C. Acid Rain Requirements

NGS is subject to Acid Rain requirements. They elected to comply early as a Phase I NO_x facility; this means they have a NO_x limit of .45 pounds per million BTU, per unit, on an annual basis. This limit applies until 2008, when it will be lowered to .40 pounds per million BTU. NGS also has specific SO₂ allowances per unit.

D. Proposed FIP Standards

1. Particulate matter is limited to 0.060 pounds per million BTU averaged over a six hour period, on a plant-wide basis.

2. Opacity is limited to 40 percent averaged over a six minute period, excluding water vapor.

3. SO₂ emissions are limited to 1 pound per million BTU averaged over a three hour period, on a plant-wide basis.

E. Summary of Changes From State Standards

1. The particulate emissions standard was changed from 17.0 $Q^{0.4320}$ pounds per hour (where Q is million BTU per hour) to 0.060 pounds per million BTU because this standard is a generally recognized form for the particulate standard and it is more reliably measured. The stringency of the new standard approximates the old standard: Using EPA policy of conducting emissions tests at 90 percent to 100 percent of the facility's full load, the original Arizona equation yields estimated allowable emissions of between .057 and 0.061 pounds per million BTU. Thus, a limit of .060 lb/MMbtu is appropriate.

The FIP we are proposing specifically states that the particulate standard will be measured on a plant-wide basis.

Although the Arizona permit did not state this explicitly, this was the way that Arizona determined compliance at the NGS historically.

2. The proposed opacity standard specifically excludes water vapor. NGS has opacity monitors on each of its stacks; water vapor, which will be present in all stacks because of the SO₂ scrubbers, causes inaccurate excess emission readings on the opacity monitors.

3. The standard for SO₂ is slightly changed. The method of compliance determination has been changed from one based on the sulfur content of coal to one based on continuous emission monitoring (CEM). The facility has experienced difficulty with the analysis of the sulfur content of coal, and the federal acid rain regulations require CEM monitoring. CEM monitoring is generally recognized as being more accurate and precise than monitoring the sulfur content of coal.

Compliance with the Arizona permit limits was determined on a per-unit basis. NGS complied with these limits by using very low sulfur coal. Now, because of the presence of the scrubbers, NGS will be able to comply with its short-term limits by removing sulfur from the exhaust stream. This will allow them to purchase slightly higher sulfur coal; additionally, the plant-wide average allows one scrubber to be down for periodic maintenance (lasting usually 30 to 40 days) without requiring the purchase of specific low sulfur coal for use during the maintenance. Nevertheless, the actual emissions will remain 90% lower on an annual basis than they were before the scrubbers were installed.

4. A number of other changes were made relative to the Arizona SIP making the FIP specific to NGS and to conform to EPA excess emissions and other reporting and quality assurance procedures.

F. Compliance Schedule

The EPA proposes that the requirements contained in this proposal become effective upon promulgation of these regulations, since the emission limits established by the proposed FIP are presently being achieved at the facility.

V. Solicitation of Comments

The EPA solicits comments on all aspects of today's proposal to promulgate a FIP to regulate air emissions from NGS. Interested parties should submit comments to the address cited in the front of this proposed rule. Public comments postmarked by

October 8, 1999 will be considered in the final action taken by EPA.

VI. Administrative Requirements

A. Executive Order (E.O.) 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

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 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 Navajo Generating Station proposed today does not impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. 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, Pub.L. 04-4, 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 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 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 would impose 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

This executive order 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. The NGS FIP is not subject to E.O. 13045 because it implements previously promulgated health or safety-based federal standards.

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 with 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 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 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, 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 13084 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 13084 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 NGS. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

As discussed above, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

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 (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 (VCS) 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.

A consensus standard, ASTM D6216-98, appears to be practical for use in lieu of EPA Performance Specification 1 (see 40 CFR part 60, appendix B) for the opacity monitoring to be required for this facility. On September 23, 1998, EPA proposed incorporating by reference ASTM D6216-98 into Performance Specification 1 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. EPA plans to complete this action in the near future. As it would be impractical for EPA to act independently from rulemaking activity already undergoing notice and comment, EPA defers taking action in the current rulemaking that would immediately adopt D6216-98, and we will therefore require use of EPA Performance Specification 1 in the interim.

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

SO₂—EPA Method 6C and Performance Specification 2 for Continuous SO₂ Monitoring

List of Subjects

40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping.

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 27, 1999.

Carol M. Browner,
Administrator.

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

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

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 § 49.20 to read as follows:

§ 49.20 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3, and the two auxiliary steam boilers at the Navajo Generating Station (NGS) in the Navajo Indian Reservation located in the Northern Arizona Intrastate Air Quality Control Region (see 40 CFR 81.270).

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

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

(1) *Administrator* means the Administrator of the Environmental Protection Agency or his/her authorized representative.

(2) *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.

(3) *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.

(4) *Owner or Operator* means any person who owns, leases, operates, controls or supervises NGS, any of the fossil fuel-fired, steam-generating equipment at NGS, or the auxiliary steam boilers at NGS.

(5) *Startup* shall mean the period from start of fires in the boiler with fuel oil, to the time when the electrostatic precipitator is sufficiently heated such that the temperature of the air preheater inlet reaches 400 degrees Fahrenheit. Proper startup procedures shall include energizing the electrostatic precipitator prior to the combustion of coal in the boiler.

(6) *Shutdown* shall be the period from cessation of coal fires in the boiler until the electrostatic precipitator is de-energized. The precipitator shall be maintained in service until boiler fans are disengaged.

(d) *Emissions Standards*—(1) *Sulfur Oxides*—No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere from Units 1, 2 or 3 in excess of 1.0 pound per million British thermal units (lb/MMBtu) averaged over any three (3) hour period, on a plant-wide basis.

(2) *Particulate Matter*—No owner or operator shall discharge or cause the discharge of particulate matter into the atmosphere in excess of 0.060 lb/MMBtu averaged over a six (6) hour period, on a plant-wide basis.

(3) *Fugitive Dust*—Each owner or operator shall operate and maintain the existing dust suppression methods for controlling fugitive dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of these regulations the owner or operator shall submit to the Administrator a description of the dust suppression methods for controlling fugitive dust from the coal handling and storage facilities, fly ash handling and storage, and road sweeping activities.

(4) *Opacity*—No owner or operator shall discharge or cause the discharge of emissions into the atmosphere exhibiting greater than 40% opacity,

excluding water vapor, averaged over any six (6) minute period.

(e) *Testing and Monitoring*. (1) Effective sixty (60) days after promulgation of this section, the owner or operator shall maintain and operate CEMS and COMS in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and appendix B of 40 CFR part 60. The owner or operator shall comply with the quality assurance procedures for CEMS and COMS found in 40 CFR part 75.

(2) The owner or operator shall conduct annual mass emissions tests for particulate matter on Units 1, 2, and 3, operating at rated capacity, using coal that is representative of that normally used. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, appendix A.

(3) The owner or operator shall conduct an initial mass emissions tests for sulfur dioxide, nitrogen oxides and particulate matter on the two auxiliary steam boilers, operating at rated capacity, using oil that is representative of that normally used. The test shall then be conducted annually or after 720 hours of operation, whichever is later. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, appendix A.

(4) 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.

(5) All emissions testing and monitor evaluation required pursuant to this section shall be conducted in accordance with the appropriate method found in 40 CFR part 60, appendices A and B.

(6) The owner or operator shall install, maintain and operate ambient monitors at Glen Canyon Dam for particulate matter (PM_{2.5} and PM₁₀), nitrogen dioxide, sulfur dioxide, and ozone. Operation, calibration and maintenance of the monitors shall be performed in accordance with 40 CFR part 58, manufacturer's specification, and "Quality Assurance Handbook for Air Pollution Measurements Systems", Volume II, U.S. EPA as applicable to single station monitors. Data obtained from the monitors shall be made available to the Administrator upon request. All particulate matter samplers shall operate at least every third day, coinciding with the national particulate sampling schedule.

(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. 7413, and enforce against any violation of the Clean Air Act or this section.

(f) *Reporting and recordkeeping requirements*. Unless otherwise stated all requests, reports, submittals, notifications and other communications to the Administrator required by this section shall be submitted 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) 744-1138, (415) 744-1076 (facsimile). For each unit subject to the emissions limitations in this section the owner or operator shall:

(1) Comply with the notification and recordkeeping requirements for testing found in 40 CFR 60.7. All data/reports of testing results shall be submitted to the Administrator and postmarked within 60 days of testing.

(2) For excess emissions or a malfunction, notify the Administrator by telephone or in writing within one business day. A complete written report of the incident shall be submitted to the Administrator within fifteen (15) working days after the event. This notification shall include the following information:

(i) The identity of the stack and/or other emissions points where excess emissions occurred;

(ii) 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;

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

(iv) The identity of the equipment causing the excess emissions;

(v) The nature and cause of such excess emissions;

(vi) 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; and

(vii) The steps that were taken or are being taken to limit excess emissions.

(3) Notify the Administrator verbally within one business day whenever an exceedance of the NAAQS has been measured by a monitor operated in accordance with this section. The notification to the Administrator shall include the time, date, and location of the exceedance, and the pollutant and concentration of the exceedance. The verbal notification shall be followed within fifteen (15) days by a letter containing the following information:

(i) The time, date, and location of the exceedance;

(ii) The pollutant and concentration of the exceedance;

(iii) The meteorological conditions existing 24 hours prior to and during the exceedance;

(iv) For a particulate matter exceedance, the 6-minute average opacity monitoring data greater than 40% for the 24 hours prior to and during the exceedance; and

(v) Proposed plant changes such as operation or maintenance, if any, to prevent future exceedances. Compliance with this paragraph (f)(3)(v) 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.

(4) Submit quarterly excess emissions reports for sulfur dioxide and opacity as recorded by CEMS and COMS together with a CEMS data assessment report to the Administrator no later than 30 days after each calendar quarter. The owner or operator shall complete the excess emissions reports according to the procedures in 40 CFR 60.7 (c) and (d) and appendix F of 40 CFR part 60. Excess opacity due to uncondensed water vapor in the stack does not constitute a reportable exceedance.

(g) *Compliance Certifications.* Notwithstanding any other provision in this implementation plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications.

(h) *Equipment operations.* The owner or operator shall operate all equipment or systems needed to comply with this section in accordance with 40 CFR 60.11(d) and consistent with good engineering practices to keep emissions at or below the emissions limitations in this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether a source 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 a person has violated or is in violation of any standard in the plan.

(2) During periods of start-up 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 and did not result from inadequate design or construction of the process or air pollution control equipment;

(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 immediately taken 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.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671, *et seq.*

Subpart D—Arizona

2. Subpart D is proposed to be amended by adding § 52.141 to read as follows:

§ 52.141 Federal Implementation Plan for Navajo Generating Station, Navajo Nation.

The Federal Implementation Plan regulating emissions from the Navajo Generating Station near Page, Arizona is codified at 40 CFR 49.20.

[FR Doc. 99–23276 Filed 9–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[FRL–6432–6]

RIN 2060–AF42

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: Comments must be received on or before October 8, 1999.

ADDRESSES: Written comments should be addressed to: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1246.

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