



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R09-OAR-2019-0471; FRL-10015-27-Region 9]

### Delegation of the Title V Permitting Program to the Navajo Nation Environmental Protection Agency for the Former Bennett Freeze

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to announce that the Environmental Protection Agency (EPA), Region IX granted the Navajo Nation Environmental Protection Agency's (NNEPA) request to supplement its delegation of authority to administer the Clean Air Act (the Act) Federal title V operating permits program. Under this supplemental delegation, the NNEPA's authority to issue and implement title V operating permits pursuant to EPA regulations is geographically extended to include an area located in the western portion of the Navajo Nation reservation known as the Former Bennett Freeze. The terms and conditions of the supplemental delegation are specified in a Second Supplemental Delegation of Authority Agreement (Agreement) between the EPA Region IX and the NNEPA, effective on July 28, 2020.

**DATES:** The effective date for the Agreement between the EPA and the NNEPA is July 28, 2020.

Pursuant to section 307(b)(1) of the Clean Air Act, judicial review of this final decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0471. Publicly available docket materials, including the Agreement, are available through <https://www.regulations.gov>, or by contacting the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Effective July 28, 2020 all notifications, requests, applications, reports and other correspondence required under 40 CFR part 71 for the Former Bennett Freeze must be

submitted to the NNEPA's Air Quality Control Program Office at the following address: NNEPA – Operating Permit Program, P.O. Box 529, Fort Defiance, AZ 86504, Attn: Glenna Lee.

**FOR FURTHER INFORMATION CONTACT:** Lisa Beckham, Air Permits Office (Air-3-1), Air & Radiation Division, EPA Region IX, (415) 972-3811, *beckham.lisa@epa.gov*.

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to announce that effective on July 28, 2020, the EPA Region IX granted the NNEPA's request to supplement its existing full delegation of authority to administer the part 71 Federal operating permits program to include the Former Bennett Freeze.

Previously, on October 15, 2004, the EPA and the Navajo Nation (or "Tribe") entered into an initial delegation of authority agreement, which authorized the Tribe to administer the part 71 program on behalf of the EPA for all sources located within a Delegated Program Area specified in that agreement. At that time, the Tribe did not request that the EPA make any determination regarding the Tribe's eligibility to administer the part 71 program over two coal-fired generating stations located on the Reservation (the Four Corners Power Plant and the Navajo Generating Station), and an area within the western portion of the Navajo Nation Reservation known as the "Former Bennett Freeze." On March 21, 2006, the EPA and the NNEPA entered into a supplemental delegation of authority agreement for the purpose of delegation of administration of the part 71 program over the Four Corners Power Plant and the Navajo Generating Station.

The Act and its implementing regulations under 40 CFR part 71 authorize the EPA to delegate authority to administer the part 71 program to any eligible tribe that submits a demonstration of adequate regulatory procedures and authority for administration of the part 71 operating permits program.

In order to be considered an "eligible tribe," the NNEPA submitted, on October 31, 2018, an application for a determination, under the provisions of the Tribal Authority Rule (TAR), 40 CFR part 49, that it is eligible to be treated in the same manner as a state for the purpose of receiving delegation of authority to administer the Federal part 71 operating permit program for the Former Bennett Freeze. The

EPA Region IX reviewed NNEPA's application and determined that it met the four criteria for eligibility, identified in 40 CFR 49.6, for the Former Bennett Freeze, and was thus eligible for entering into a supplemental delegation agreement with the EPA Region IX to administer the part 71 program for the Former Bennett Freeze<sup>1</sup>. The EPA Region IX's eligibility determination was signed on April 28, 2020.

Pursuant to 40 CFR 71.10(b), the EPA Region IX hereby notifies the public that effective July 28, 2020, it granted the NNEPA's request and is fully delegating the authority to administer the Federal operating permits program for the Former Bennett Freeze as set forth under 40 CFR part 71 and in the Agreement. The terms and conditions for the supplemental delegation are specified in the Agreement between the EPA Region IX and the NNEPA.

If, at any time, the EPA Region IX determines that the NNEPA is not adequately administering or cannot adequately administer the requirements of part 71 or fulfill the terms of the Agreement, this supplemental delegation may be revoked, in whole or in part, pursuant to 40 CFR 71.10(c), after appropriate consultation with the NNEPA. The EPA will notify the public through a Federal Register notice of a partial or full termination of this Agreement.

Under the supplemental delegation, the EPA retains the authority to (1) object to the issuance of any part 71 permit for sources located in the Former Bennett Freeze, (2) act upon petitions submitted by the public regarding sources in the Former Bennett Freeze, and (3) collect fees from the owners or operators of any sources in the Former Bennett Freeze if it is demonstrated that the NNEPA is not adequately administering the part 71 program with respect to the Former Bennett Freeze, in accordance with the Agreement, 40 CFR part 71, and/or the Act. Because the EPA is retaining its authority to act upon petitions submitted pursuant to 40 CFR 71.10(h) and 71.11(n), any such petitions must be

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<sup>1</sup> The Tribe's initial delegation agreement excluded the Former Bennett Freeze because of ongoing litigation between the Hopi Tribe and the Navajo Nation. On December 4, 2006, the U.S. District Court for the District of Arizona found that lands in the Former Bennett Freeze were no longer "under litigation", and that the restrictions on development were no longer in force. Honyoama v. Shirley. No CIV74-842-PHX EHC (D. Ariz.) (Order and final judgement, Dec 4, 2006).

submitted to the EPA Region IX following the procedures set forth in those regulations.

Dated: October 21, 2020.

John Busterud,  
Regional Administrator,  
Region IX.

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