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August 11, 2023

Honorable Administrator Michael S. Regan
U. S. Environmental Protection Agency
Docket Center, OAR
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: NTAA comments on the Supplemental Proposed National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelters Docket ID No. EPA–HQ–OAR– 2020–0430

Dear Honorable Administrator Regan,

The National Tribal Air Association (NTAA) is pleased to submit this letter to provide comments on the U. S. Environmental Protection Agency's (EPA) Proposed Supplemental Rules for the Primary Copper Smelter Industry, Residual Risk and Technology Review. The NTAA is a member-based organization with 156 Member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of American Indian Tribes and Alaskan Natives. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important to understand that interactions with the organization do not substitute for Nation-to-Nation consultation, which can only be achieved through direct communications between the federal government and American Indian Tribal Governments and Alaskan Natives.

It is important to note that even though the two sources impacted by these rules are not located in Indian Country. They are, however, located nearby and thus can have significant impact on the health of Native American citizens. The EPA's own demographic analysis demonstrates the disproportionate impact of these rules on Native Americans. As such, the NTAA strongly encourages taking a proactive approach to reaching out to these impacted Tribes instead of sending a passive letter or email to Tribal Leaders. In addition, when considering the

significant emission level of mercury, this rule will be of interest to Tribes across the country. Since mercury can have local impacts and can be transported over great distances, mercury impacts traditional treaty rights and lifeways of Tribes across the nation.

The NTAA appreciates this as a supplemental proposal to the 2022 NESHAP, addressing nonregulated Hazardous Air Pollutants (HAPs) specifically, Dioxin and Furans, Benzene, Toluene, Naphthalene, as well as additional data and comments provided by the Freeport facility. In reviewing this proposal, the NTAA has the following comments:

1) The NTAA questions the approach used to look at the Beyond the Floor (BTF) cost of controls for the nonregulated pollutants and mercury. By taking a pollutant-by-pollutant approach to assessing the cost per ton of pollution, the EPA's approach makes the cost assessment very high. For example, the BTF control options for Benzene, Polycyclic Aromatic Hydrocarbons (PAH) and particularly Naphthalene, and Dioxin and Furans were all the addition of Active Carbon Injection in addition to the existing control device. So, the capital outlay and operational cost should include the tons per year (TPY) reduction of all three pollutants instead of looking at the cost per ton for each one individually. Similarly, the BTF control for Hydrogen Chloride and Chlorine is dry sorbent injection so one control will address both pollutants. The NTAA appreciates that the EPA has Maximum Achievable Control Technology (MACT) floor requirements for these pollutants that result in additional monitoring and record keeping, however, the NTAA encourages the EPA to reconsider the BTF options for controls of these pollutants and requiring the additional control requirements.

2) The NTAA understands that the risk drivers for this source category are toxic metals, particularly lead and arsenic. The roof vent requirements were established to address that risk. The 2022 rule required Freeport [1]to address the roof vent emissions and required a capture system including hoods, ducts, fans, and a baghouse. The NTAA is concerned that the EPA accepted the comment from Freeport to reduce the stringency of the controls for the pollutants that are risk drivers. Specifically, the EPA accepted the industry's proposal for a single emission limit instead of the three separate emission limits for the three roofline emission points. The EPA asserts that this emission limit achieves more pollution reduction. However, the NTAA is concerned that this undermines the enforceability of the emission limits. Emission averaging scenarios often do not achieve the anticipated emission reduction because, in providing flexibility on source operations, there is often insufficient monitoring, recordkeeping and reporting to ensure that the combined limit is met.

[1] The comments contained in the attached files are submitted by Freeport-McMoRan Miami Inc. with respect to the proposed revisions to the NESHAP for Primary Copper Smelting, 40 CFR Part 63, subpart QQQ (Docket EPA-HQ-OAR-2020-0430)

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3) The EPA proposed two options to address the control requirement for Aisle Scrubber. Option 1 would result in greater emission reductions. Given that the community surrounding these facilities are disproportionately impacted, additional risk reduction can help address the existing impacts more effectively.

4) The NTAA agrees that Particulate Matter (PM) is not an appropriate surrogate for mercury and thus agrees that emission limits for mercury are appropriate. Since the MACT floor emission limit does not require additional controls, the NTAA suggests that the EPA adopt the BTF standard for mercury. Given mercury produces both local and national impacts, it is important to limit mercury emissions as much as possible to address local and national health risk and to protect Tribal treaty rights and lifeways.

5) The NTAA supports the proposal to not allow facilities to use the bypass stacks that circumvent control devices.

6) The NTAA understands the EPA's assertion that fenceline monitoring is not appropriate for this source category given roof top emissions would not be measured at the fenceline. However, the NTAA suggests that the EPA consider community monitoring similar to those proposed in the Ethelene Oxide Sterilizer Rule[2]. Given the risk drivers from these facilities are HAP metals, they tend to deposit within a few miles of the facility so community scale monitoring can ensure the surrounding community is protected.

In closing, thank you for the opportunity to comment on this important rule. The NTAA appreciates that this rule will significantly reduce the emissions of lead, arsenic, and if the EPA promulgates a BTF standard, mercury. Once implemented, this rule will improve the health for communities near these facilities.

Respectfully,

Syndi Smallwood
Chair
Executive Committee, National Tribal Air Association

Cc: Pat Childers, Senior Tribal Program Coordinator, OAR
Carolyn Kelly, Program Manager, NTAA
Sharri Venno, R1 RTOC Tribal Co-Chair

[2] EPA-HQ-OAR-2019-0178 FRL-7055-03-OAR

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