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June 21, 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 Proposed National Emission Standards for
Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments
Docket Number EPA-HQ-OAR-2017-0664

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 Rule for the National Emissions Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing Amendments. 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.

This rule is extremely important to Tribes particularly in Minnesota and Michigan because it focuses on mercury emissions which are deposited in ceded Territories and impact the Tribes' sovereign Treaty rights. In addition, there are potential concerns from other Tribes with extractive industries such as copper, lithium, uranium, gold and other similar operations, since this rule may set precedence for other rulemaking in the future, that could impact a wider set of Tribes.

The NTAA appreciates the significant engagement that the EPA rule development team conducted with the workgroup including the Fond du Lac Band of Lake



Superior Chippewa, Leech Lake Band of Ojibwa, the states of Minnesota and Michigan, Louisiana Environmental Action Network (LEAN), and others. The NTAA encourages the EPA to duplicate this level of engagement with Tribes and other important stakeholders in future rulemakings. The result was an important opportunity to meaningfully engage in the rulemaking process.

In this letter, the NTAA will cover comments in a few key areas: Dioxin, Beyond the Floor Consideration, Risk Assessment, Acid Gasses.

Dioxin

The NTAA was disappointed that the EPA failed to include dioxin as a pollutant of concern in the Information Collection Request (ICR) that supported this rule. The NTAA disagrees with the Proposal's statement that "Emissions data from stack tests conducted since 2014 indicate mercury is emitted by indurating furnaces at taconite iron ore processing facilities. **Mercury was the only Hazardous Air Pollutant (HAP) identified by the EPA that is not regulated under the existing standards for this source category.**" When the workgroup had an opportunity to provide input on the ICR letter, they requested that dioxin be included in the ICR since it was identified in the 2020 risk assessment as a HAP emitted from this category. Despite this input, EPA did not include dioxin as a HAP for data collection in the ICR. It is disingenuous of EPA to say that mercury was the only HAP identified for this rulemaking when its own Risk Assessment identified dioxin, another persistent and bioaccumulating HAP, from the source category. The NTAA suggests that the EPA, in a future rulemaking, address this oversight and develop standards for dioxin from this source category.

Beyond the Floor Reductions

The NTAA appreciates the significant mercury emissions reductions that will be achieved by this rule. However, the NTAA believes that this proposal falls short of the reductions that can be achieved if the EPA uses the options it evaluated to go beyond the MACT floor. The EPA reviewed options to set the standards at levels "beyond the floor" looking at 4 intervals of 10% reduction below the MACT floor. The EPA is not proposing to set the mercury standards at these more stringent levels due to "unreasonable cost". Given the bio-accumulative nature of mercury, and the fact that all of the water bodies in the treaty areas already have fish consumption advisories, and there are already impacts on the rights of the Tribes to conduct their traditional life practices, the NTAA requests that the EPA set the standards at the 30% reduction level at a minimum. The EPA determined this would be the most cost effective of the beyond the floor options evaluated and would achieve an additional reduction in mercury of **621 pounds of mercury per year**. This option would reduce mercury emissions to a level that would help to address the public health concerns associated with high concentrations of mercury in water, fish tissues, and other subsistence resources for Tribes and the public.



Cost Considerations

The EPA did not propose any of the beyond the floor options because it found these options to not be cost effective. However, the NTAA disagrees with this assessment for the following reasons:

The EPA should recognize that the incremental cost for the first three beyond the floor options are just the incremental cost for increasing the amount of Active Carbon Injection. Given that the cost of complying with the MACT floor would be \$154,000 per pound of mercury the additional beyond the floor annual incremental cost for option 3 of \$46,000 per pound of mercury per year is minimal.

In looking at the cost per pound of mercury, the EPA should not use the ratio of cost per pound of mercury at the facility level, but instead use the ratio of the revenue of the parent companies to the cost per pound reduction of mercury. This approach was used in the HON/SOCMI Rules recently proposed. U.S. Steel Cooperation and Cleveland-Cliffs Incorporated are the two parent companies of all the impacted sources with annual revenues of \$22 and \$23 Billion per year. This minimal incremental cost to these parent companies is thus reasonable to address the health and environmental impacts of mercury.

In addition, if the EPA included dioxin, there would be additional benefits considered.

EPA's Tribal Trust and Treaty Responsibilities

Further justification for promulgating option 3 of the beyond the floor options, EPA should consider its Trust responsibility to protect the interests of Tribes and the Tribes' Treaty rights. The EPA's current policy supports the use of the consideration of Tribal rights and protections in implementing the Clean Air Act (CAA). In the case of this rule, the sources impacted are in the areas covered by a series of treaties signed beginning in 1837 and continuing through 1867. In these treaties the Ojibwe and Dakota Tribes ceded areas across Minnesota and Michigan to the U.S. Government but retained the usufructuary rights in the ceded territories, including hunting, fishing, ricing, and other subsistence uses.

For example, On September 30th, 1854, the Lake Superior and Mississippi Chippewa signed an agreement granting the U.S. Government use of what is now Northeastern Minnesota. As part of the treaty, the Chippewa

...and such of them as reside in the territory hereby ceded shall have the right to hunt and fish therein until otherwise ordered by the President.

-Article 11, Treaty of La Pointe, 1854



It is the EPA's legal responsibility to protect the interest of Tribes through its trust responsibility and as stated in its own existing policies.

Specifically:

EPA's 1984 Indian Policy

“The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy”. “EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and the Indian Tribes as expressed in certain treaties and federal Indian law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interest of the Indian Tribes with carrying out its responsibilities.”

EPA's Treaty Rights Policy

“The U.S. Constitution defines treaties as part of the supreme law of the land, with the same legal force as federal statutes. Treaties are to be interpreted in accordance with the federal Indian canons of the construction, a set of long-standing principles developed by courts to guide the interpretation of treaties between the U.S. Government and the Indian Tribes. As the Supreme Court has explained, **treaties should be construed liberally in favor of tribes, giving effect to the treaty terms as tribes would have understood them, with ambiguous provision interpreted for their benefit.**”

The NTAA believes that the additional consideration of the EPA's trust and treaty responsibilities should be factored into the decision to go beyond the floor and justify establishing a standard that supports protecting the States' Total Maximum Daily Load levels which in turn will achieve the public health protection and protection of the Tribe's rights for maintaining access to health subsistence lifeways.

Risk Analysis

The NTAA recognizes that this rule does not address Residual Risk but given the significant impact of mercury and dioxin on Tribal hunting, fishing and subsistence treaty rights, the EPA should consider, in a future rulemaking, re-evaluating residual risk to more accurately consider the impacts of mercury on Tribes in the area. Particularly where the Tribes have local information on fish consumption and fish tissue samples. Many Tribes have ongoing efforts to look at mercury levels in fish, fowl, rice and other traditional food sources and conduct consumption surveys. The EPA should work with the Tribes and local universities to conduct more accurate local scale risk assessments.



Acid Gasses

The NTAA is supportive of including Standards for Hydrochloric acid and Hydrogen Fluoride and agrees with the removal of Particulate Matter as a surrogate for the acid gasses.

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 mercury and 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