



National Tribal Air Association

Fact Sheet

The U.S. Environmental Protection Agency's Proposed *National Emissions Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing Amendments*.

Docket ID No. EPA-HQ-OAR-2017-0664

The comment deadline is June 29, 2023. Your comment letter can be submitted electronically to the *Federal Rulemaking Portal*. <https://www.regulations.gov/> OR email to a-r-Docket@epa.gov.

Background

- There are eight facilities owned by two parent companies (U.S. Steel Corporation and Cleveland-Cliffs Incorporated)
 - Six facilities in Minnesota (MN)
 - Two in Michigan (MI)
 - One facility in MN is temporarily idled and one facility in MI is indefinitely idled.
- Taconite Iron Ore Processing includes rock mining which is crushed, heated, and separated concentrating the iron pellets.

Why Tribes outside of Region V may be interested?

- Mining of various metals is occurring across the country with similar operations. This rule may show how other mining and processing rules may be written in the future.

Timeline

- The NESHAP was originally promulgated in 2003.
- The EPA missed the deadline to conduct the Technology review and the Residual Risk and Technology Review (RTR) which should have been completed in 2011.
- The EPA finally conducted the RTR in 2020. However, the EPA neglected to set standards for all of the Hazardous Air Pollutants (HAPs) including mercury and dioxin and inappropriately used Particulate Matter as a surrogate for controls for Acid Gasses Hydrochloric Acid (HCL) and Hygrogen Floride (HF).
- The EPA was sued by Louisiana Environmental Action Network (LEAN) to address these deficiencies. This rule is in response to this suit.

Overview

- The Proposal includes two primary actions:
 - Revisions of the National Emissions Standards for Air Toxics



- Reducing emissions of mercury & setting standards for Acid Gasses Hydrochloric Acid (HCL) and Hydrogen Fluoride (HF)
 - The Proposal does not address dioxin and furans.
 - The EPA states that mercury is the only HAP of concern identified as unregulated.
- The EPA has the authority to set the “Maximum Achievable Control Technology (MACT) Floor” to be the level of control for the best performing 5 sources in the category for existing sources and the best performing source emission level for new sources.
- The EPA can look beyond the floor (BTF) and consider various impacts of the more stringent regulatory options.
 - If the EPA concludes that the more stringent regulatory options have unreasonable cost,
 - non-air quality health and environmental,
 - and/or energy impacts.
- However, if the EPA concludes that impacts associated with BTF levels of control are unreasonable considering additional emissions reductions achieved, the EPA selects those BTF levels of control as MACT.

This Rulemaking

- **Option 1, Propose the limit at the MACT Floor**
 - Mercury limits for new and existing indurating furnaces would be set at the MACT floor level, based on the 99-percent Upper Prediction Limit (UPL), and would apply individually to each furnace at each facility.
 - MACT floor limit of 1.4×10^{-5} lb/LT for existing sources and a MACT floor limit of 3.1×10^{-6} lb/LT for new sources.
- **Option 2 Beyond the floor at levels of stringency beyond MACT floor from 10% -40% at 10% intervals**
 - The 10%-30% more stringent levels can be achieved through increased carbon injection into the scrubbers.
 - 40% level would require the addition of a bag house.
- The EPA is not proposing beyond the floor because they found the cost to be “unreasonable.”
- **Alternative Compliance method**
 - Allowing averaging mercury emissions across existing indurating furnaces located at the same taconite facility.
 - A facility may average mercury emissions across the indurating furnaces provided that the mercury emissions averaged across all indurating furnaces at the facility do not exceed a mercury emission limit of 1.26×10^{-5} lb/LT, on a production-weighted basis.
 - This emission limit reflects a 10 percent adjustment factor to the MACT floor standard.



- Result in mercury reductions greater than those achieved by application of the MACT floor on a unit-by-unit basis.
- **Proposal for Acid Gasses**
 - Proposing to remove Particulate Matter as a surrogate for Acid Gasses Hydrochloric Acid (HCL) and Hydrogen Fluoride (HF).
 - Establish numeric limits for HCL.
 - Existing sources 4.4×10^{-2} lb of HCl/Long Ton (LT) and 1.2×10^{-2} lb of HF/LT
 - New sources or reconstructed 4.4×10^{-4} lb of HCl/LT of taconite pellets produced and 3.3×10^{-4} lb of HF/LT of taconite pellets produced.

NTAA Comments

- The EPA evaluated 4 options to go beyond the floor but did not propose any of those options because they were not “cost effective.”
- The EPA should consider going beyond the floor to at least the 30% reduction level which:
 - The EPA determined option 3 would be the most cost effective of the four beyond the floor options.
 - And achieve an additional reduction in mercury of 621 pounds of mercury per year.

The NTAA prefers the beyond the floor limit of the 40 % reduction level.

- Reduce mercury emissions to a level protective of the State’s Total Maximum Daily Load in both Minnesota and Michigan protecting the Tribes’ health and subsistence lifeways as agreed on in the treaties.

The NTAA disagrees that the beyond the floor options are “not cost effective” because:

- The incremental cost of the first 3 beyond the floor options are minimal and only include the use of additional carbon in the scrubbers.
- The EPA should consider not just the cost to the individual sources but the cost to the income of the parent company.
- In support of going beyond the floor, the EPA should recognize its Trust responsibility to protect the interest of Tribes and to protect the Tribe’s Treaty Rights.
- Mercury contamination has impacted the Tribes’ ability to maintain these rights and subsistence lifeways.
- The EPA should recognize the impacted areas are covered by the treaties signed between 1837 through 1867, in which the Ojibwe and Dakota Tribes ceded areas across Minnesota to the U.S. Government, but retained



perpetually usufructuary rights including hunting, fishing, ricing, and other subsistence uses.

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.”

Other Comments

- The EPA failed to regulate dioxins.
- Dioxins were addressed in the 2020 Risk Assessment but not included in the Information Collection Request.
- The EPA should address this oversight in future rulemaking.
- This action conducted a baseline Risk Analysis but not a Residual Risk Analysis. Instead, they relied on the Risk Assessment from the 2020 rulemaking.
- The EPA should consider (potentially in a future rulemaking) re-evaluating residual risk to more accurately consider the impacts of mercury on Tribes.
- The EPA should consider collecting local fish tissue samples and consumption rates.
- This analysis should look at both mercury and dioxins.