

NATIONAL TRIBAL AIR ASSOCIATION FACT SHEET

EPA's Primary Copper Smelter Risk & Technology Review

BACKGROUND

As required by the Clean Air Act (CAA), on January 11, 2022, the U.S. EPA proposed a rule that would revise the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Primary Copper Smelters for both major and area sources in the category. EPA proposed these revised standards after conducting the Residual Risk and Technology reviews required 8 years after EPA establishes the original NESHAP.

WHAT ARE HAZARDOUS AIR POLLUTANTS (HAPs)?

Hazardous Air Pollutants (HAPs) or air toxics are pollutants listed by Congress that cause or contribute to cancer or noncancer health impacts such as, neurological, reproductive, or other developmental health or environmental impacts. There are currently 187 HAPs listed on the www.EPA.gov website.

ENVIRONMENTAL JUSTICE INITIATIVES

There are three sources impacted by this rule: 1) a major source smelters in Hayden, Arizona, 2) another major source smelter in Miami, Arizona, and 3)

an “area” source standard in Magma, Utah. Both major source smelters are located in Environmental Justice Communities with high populations of low income, Hispanic, and Native Americans. These facilities are located near the San Carlos Apache Reservation and the Ute Indian Tribe. The residual risk analysis indicates that the risk from these two smelters is unacceptable for public health and requires additional controls to reduce the risks.

HOW DOES THIS RULE EFFECT TRIBES?

This rule will directly impact Tribes in Arizona and will have national implications for all Tribes. There are two major smelters in Arizona, one near the border of the San Carlos Apache Tribe, that emits HAPs: particularly, lead and arsenic. There are also impacts to Tribes more broadly through the emission of mercury. This rule will impact Tribes indirectly because it has the potential to set precedent for future EPA rulemaking by:

- Setting standards “beyond the floor” or more stringent standards by considering the risk and impact to Native Americans and EJ communities



Dust and smoke fills the Air with particulates from the Hayden Smelter. Credit: Southwest Photo Journal.

1. <https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications>
2. <https://southwestphotojournal.com/2012/03/04/haydens-smelter-turns-100-years-pollution-issues-worry-residents-but-jobs-and-a-quiet-life-a-plus/>

- Until this draft rule, EPA used PM standards as the surrogate to lump all air toxic metals together. However, these standards does not address mercury in the vapor stage. Setting a standard for mercury and not using PM standards as a surrogate will help EPA control mercury in the gaseous phase.

AN OVERVIEW PROPOSED RULE:

- The Clean Air Act requires EPA to assess the risk remaining after application of the final technology-based air toxics emissions standard. This is known as a residual risk assessment.
- Facilities in this source category mainly emit lead, arsenic, and other HAP metals.
- EPA is proposing to conclude that risks due to HAP emissions from the major source category are unacceptable largely based on modeled lead concentrations exceeding the National Ambient Air Quality Standards, along with elevated acute noncancer risks due to arsenic.
- In response to the risk findings, EPA is proposing new standards for process fugitive emissions from anode refining roofline vents and work practices to minimize fugitive dust emissions, which will achieve acceptable risks and protect human health with an ample margin of safety.
- Following a residual risk and technology review conducted under the Clean Air Act, EPA is proposing amendments that would enhance the effectiveness of the *major source standards* by adding new standards for previously unregulated sources, improving compliance and implementation. Specifically, the EPA is proposing to:
 - » **Add new standards for particulate matter** (as surrogate for hazardous air pollutants metals) that would apply to anode refining furnace point source emissions and roofline emissions from anode refining furnaces, smelting furnaces, and converters;
 - » **Add new mercury standards for a combination of point source emissions** from the converters, smelting furnaces, and anode refining;
 - » **Add new work practice standards** for fugitive dust control;
 - » **Revise requirements for periods of startup, shutdown, and malfunction** to be consistent with recent court decisions; and,
 - » **Require electronic reporting.**
- Following a technology review conducted under the CAA for the area source, EPA is proposing the following minor amendments to the *area source standards*:
 - » **Revise requirements for periods of startup, shutdown, and malfunction** to be consistent with recent court decisions; and,
 - » **Require electronic reporting.**



Sierrita Operations in Arizona - Source: FCX

<https://seekingalpha.com/article/4357335-freeport-mc-moran-pleasant-q2-update-for-change/>

WHERE CAN I LEARN MORE AND COMMENT ON THE DRAFT?

- NTAA has created a [Policy Resource Kit](#) for Tribes to use to comment on this draft.
- You may send comments, identified by **Docket ID No. EPA-HQ-OAR-2020-0430**, by any of the following methods: *Federal eRulemaking Portal*: <https://www.regulations.gov/>. Follow the online instructions for submitting comments. *Email*: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2020-0430 in the subject line of the message.
- EPA will take written comment on the proposal are due on or before **February 25, 2022**.
- To learn more, visit [EPA's website](#).