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February 25, 2022

Tonisha Dawson
Sector Policies and Programs Division (D243-02)
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Research Triangle Park, North Carolina 27711

**National Tribal Air Association's Comments on the U.S. EPA's Proposed
Primary Copper Smelter Residual Risk and Technology Review, Docket
EPA-HQ-OA-2020-0430**

Dear Ms. Dawson:

The National Tribal Air Association (NTAA) is pleased to submit this letter to provide comments on the Environmental Protection Agency's (EPA's) Proposed results of EPA's Residual Risk and Technology Review (RTR) for the National Emission Standards for Hazardous Air Pollutants (NESHAP) for major source Primary Copper Smelters as required under the Clean Air Act (CAA) and the technology review for the Primary Copper Smelting area source NESHAP.

The NTAA is a member-based organization with 154 principal 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 Indian Tribes. 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 NTAA 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 interactions with the organization does not substitute for government-to government consultation, which can only be achieved through direct communications between the federal government and Indian Tribes.

The NTAA agrees with the EPA's proposal to determine the risk to be unacceptable, given the lead and arsenic emissions as well as the other HAP metals to the current regulations. The NTAA also agrees with the proposal for 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.

The NTAA is supportive of the proposal to establish emission standards for mercury emissions, separate of the PM standards that address emissions of other metal HAPs. Since mercury is emitted in the vapor stage, the NTAA agrees PM is not an appropriate surrogate for controls of mercury emissions.



The NTAA supports the proposal to include opacity limits for the Primary Copper smelters. It is appropriate to establish opacity limits (such as the opacity limits in the state air permits and CD) in the NESHAP in addition to the numeric PM MACT floor emissions limits. As EPA discussed in the proposal many of these opacity limits are already required in State permits, so there is no additional cost to the sources but by including opacity limits as part of the NESHAP, it establishes the national requirement as it provides a level-playing field across sources. Furthermore, as EPA discussed, these opacity limits provide for ongoing monitoring for upsets or other operational and compliance issues. The opacity limits should be in addition to the numeric PM MACT floor emissions limits as an additional layer of protection for the public.

The NTAA believes that the EPA should establish direct lead limits, either in addition to, or instead of, the PM limit, because it is one of the risk drivers for this source category and would be appropriate to control for it directly.

The NTAA is supportive of the ‘Beyond the Floor’ and ample margin of safety determinations for this source category, given the impacts of this source category on Native American and Hispanic populations. Providing protections beyond the floor will help reduce the risk to these disproportionately impacted populations.

Specifically, the NTAA supports of this proposal:

- BTF emissions limit for PM of 1.6 lbs/hr for anode refining process fugitive emissions at existing and new sources
- Ample margin of safety determination the proposal to require facilities to develop and implement a robust fugitive dust plan, requiring, at a minimum, the specific work practices but also could include other practices identified by the facilities.

Finally, the NTAA is disappointed with the apparent lack of attention to the impacts on the Tribes that are located near the two major sources; this includes the San Carlos Apache Tribe.

The language you use in addressing EO 13175.

This action does not have Tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. However, consistent with the EPA policy on coordination and consultation with Indian Tribes, the EPA will offer government-to-government consultation with Tribes as requested.

We recognize that these sources are not on the reservations; however, and thus, the Tribe does not have jurisdiction over these sources, so under the terms of the EO by itself there are not “implications”. However, the Agency’s should act on its own Indian Policy and the Tribal Treaty Rights policy in determining if consultation is required. It is disingenuous given the proximity to the reservation and its impact on nearby Tribal populations, the environment, and potential treaty right to not have proactively reached out and offered consultation to the impacted Tribes in Hayden and surrounding Gila Counties.

The NTAA appreciates this opportunity to submit this pre-proposal comment and looks forward to further work with the EPA on this important issue. If you have any questions or seek

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clarification from the NTAA, please do not hesitate to contact please do not hesitate to contact the NTAA's Project Director, Andy Bessler at (928)523-0526 or email Andy.Bessler@nau.edu.

On Behalf of the NTAA Executive Committee,

Syndi Smallwood

NTAA Chairwoman

National Tribal Air Association's

Executive Committee

Cc: Pat Childers, EPA OAR