

May 2, 2003

U.S. EPA
EPA West (Air Docket)
Attn: Docket ID No. A-2002-04
1200 Pennsylvania Ave., NW
Room: B108 Mail Code: 6102T
Washington, D.C. 20460

Re: *Comments of Phelps Dodge Corporation on EPA's Proposed Standards for Defining "Routine Maintenance, Repair and Replacement" for Prevention of Significant Deterioration and Nonattainment New Source Review, 67 Fed. Reg. 80290 (December 31, 2002)*

To Whom It May Concern:

I. INTRODUCTION AND SUMMARY

A. *Introducing the Commenters*

Phelps Dodge Corporation is the world's second-largest producer of copper, a world leader in the production of molybdenum, the largest producer of molybdenum-based chemicals and continuous cast copper rod, and among the leading producers of magnet wire and carbon black. The company's two divisions, Phelps Dodge Mining Co. and Phelps Dodge Industries, employ approximately 14,500 people in 27 countries.

B. *The Importance of the Issue*

Some of Phelps Dodge's U.S. facilities are major sources under the New Source Review (NSR) program including both the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NA/NSR) programs. In order to operate safely and effectively, each of these facilities periodically must undertake hundreds of activities that are routine maintenance, repair and replacement (RMRR). These activities must be undertaken in a timely manner. A detailed and time-consuming analysis of their NSR impact impedes implementation and delays improvements in production efficiency and pollution control. Thus, Phelps Dodge has a substantial interest in this rulemaking.

Under three separate Administrations, EPA has stated, "since Congress obviously did not intend to make every activity at a source subject to new source review requirements," a "common-sense" exclusion of RMRR activities from NSR is legally justified. See, *e.g.* 57 Fed. Reg. 32314, 32316 (July 21, 1992); 61 Fed. Reg. 38250, 38253 (July 23, 1996); 67 Fed. Reg. 80290, 80293 (December 31, 2002). EPA's NSR rules have included such an exclusion since the

promulgation of the current regulatory framework in August 1980. However, in recent years conflicting EPA interpretations have created uncertainty about the applicable standards for determining RMRR. In addition, many of those interpretations have denied RMRR status to changes that fell well within a common-sense definition of RMRR, further compounding the uncertainty. In particular, EPA rulings have increasingly tended to deny RMRR status to changes that increase source efficiency or reduce down time.

These new interpretations have created an extremely unfortunate situation. Companies simply must take actions that are in fact RMRR in order to keep their facilities operating safely and economically. Moreover, economically beneficial actions can render existing assets more environmentally protective. Such actions increase the ability of existing facilities to meet growing demand and thus reduce pressure for “greenfield” development. Such productivity increases also reduce emissions per unit of product, and thus make the overall economy more environmentally efficient. Yet, EPA’s increased hostility toward such actions placed companies in peril for taking the actions.

EPA has proposed two approaches to correct this problem. Under EPA’s “equipment replacement” approach, replacement of the elements of a “process unit” would automatically qualify as RMRR if it did not change the unit’s basic function or capacity and if it fell under a specified cost threshold. Under EPA’s second approach, the “RMRR allowance” approach, all changes that fell within a predetermined RMRR budget would be excluded. Phelps Dodge believes that both approaches are clearly legal and beneficial.

The “equipment replacement” approach properly concludes that it is “routine” in American industry to “replace” elements of equipment in order to improve the performance of a source without changing its basic functions. It also properly concludes that a rule that does not artificially burden this routine practice will be, on balance, environmentally beneficial. Finally, it sets reasonable conditions to the use of this exclusion to prevent abuse.

The “RMRR allowance” approach starts from the clearly valid conclusion that sources will make their RMRR expenditures before they make other expenditures, since RMRR is necessary for continued operation. Accordingly, establishing a source-wide RMRR allowance tied to normal RMRR expenditures will be well calculated to exempt RMRR expenditures, but not other expenditures, from NSR review.

The allowance approach may not fit all industries. In some sectors it may be simpler and more practical to develop narrative lists of activities that qualify as RMRR. Such a list could cover certain specific actions, or categories of actions (for example, all activities that are accounted for as expenses, or that cost less than a certain amount). No such list could ever be all-inclusive. Accordingly, it would be essential to make clear that the list did not create any presumption that actions had to be on the list to be RMRR. As with EPA’s current proposals, the list would simply create a “safe harbor” with no negative implications for items that were not included. As with EPA’s current two proposals, actions that did not fall on the list would be evaluated under the existing RMRR standards.

Phelps Dodge supports promulgation of both of EPA's proposed approaches. EPA should promulgate a final rule as quickly as possible. There are no obstacles to early promulgation of the equipment replacement proposal. An allowance approach may take longer to develop given the factual inquiries and analysis that may be required. Accordingly, EPA should not hesitate to take early action to promulgate the equipment replacement approach even if work on the final RMRR allowance rule is still continuing.

II. SUMMARY OF THE EPA PROPOSAL

EPA does not propose to repeal or modify the current "case-by-case" approach to RMRR. That approach would remain fully available for any changes that did not fit within the two "safe harbors." Instead, EPA proposes to add the equipment replacement and RMRR allowance approaches to this existing structure, to identify projects that automatically qualify as RMRR and thus to minimize the number of projects that have to undergo a case-by-case review. Phelps Dodge supports this general approach.

A. *The Equipment Replacement Approach*

Under this approach, the replacement of components of a "process or production unit" at a major source with "functionally equivalent" components would qualify automatically as RMRR as long as certain conditions were met. A "process unit" would be "any collection of structures and/or equipment that ...uses material inputs to produce or store a completed product." 67 Fed. Reg. at 80302 & 80312. *See e.g.*, proposed 40 C.F.R. § 52.21(b)(56). This is essentially the same as the definition of "process or production unit" used in the NESHAP program. *See* 40 C.F.R. § 63.41.

A "functionally equivalent" component is one that "serves the same purpose as the replaced component." 67 Fed. Reg. at 80312, proposed 40 C.F.R. § 52.21(b)(57). "Functionally equivalent" replacements of "process unit" components will be RMRR if the replacement does not change the "basic design parameters" of the "process unit." The replacement does not create a new process unit. The replacement does not exceed a certain percentage of the "fixed capital cost" of an entirely new process unit.

EPA seeks comments on the following.

1. Whether replacement with identical or functionally equivalent items constitute RMRR without regard to other considerations.
2. Whether the replacement percentage should be 50% and how the percentage should be applied to different industry sectors.
3. EPA also asks how to apply any percentage cut-off – for example, should the percentage be applied to each separate replacement activity, or should the replacement activities be accumulated over some defined period?

B. *The Allowance Approach*

Under the allowance approach, expenditures that did not exceed a certain prescribed “annual maintenance, repair and replacement allowance” would be automatically considered RMRR. 67 Fed. Reg. at 80311-12, proposed 40 C.F.R. § 52.21(b)(2)(b)(iii)(a)(2)(ii). That allowance would be set as a sector-specific percentage of a defined “baseline.” The “fixed capital cost” of a specified set of process units would set that “baseline.” The RMRR status of expenditures that exceeded the allowance limit would be evaluated case-by-case under the existing standards. Expenditures would not be eligible for the allowance exclusion if they created a new or different “process unit”, or increased the hourly achievable emissions rate of the source at which they took place.

Sources that used this approach would have to use it for **all** their RMRR activities. They could not pick and choose. They would also have to rank their annual expenditures by size, smallest first, so that the largest expenditures (which EPA thinks are the least likely to be RMRR) would be the first to exceed the allowance if there were an exceedance. Sources would have to submit an annual report on their compliance with the allowance. That report would describe their expenditures and their relation to the exclusion percentage.

EPA asks for comments on the following specific aspects of this test:

1. EPA proposes to apply the allowance test on a source-wide basis, but asks for comment on whether to apply it on a “process unit” basis instead.
2. EPA proposes to use the replacement “fixed capital value” of the units covered by the test – either a whole source or a process unit – to set the “baseline.” However, EPA asks for comment on the alternative of using original value restated for inflation.
3. EPA asks for comment on the administrative difficulties an allowance approach might pose.
4. EPA proposes to set different RMRR percentage allowances for different industry sectors. EPA suggests both using industry-specific percentages, and reliance on the Annual Asset Repair Guideline Percentages (“AAGRP”) set out in IRS Publication 534.
5. EPA also asks for comment on how to account for variability among sources in setting an RMRR percentage.
6. EPA proposes annual determinations of compliance with the RMRR percentage, but asks for comment on using a multi-year approach.
7. EPA proposes to allow sources to compute their NSR compliance after their single-year or multi-year compliance period has elapsed. However,

EPA expresses concern that under this approach a source might not discover its non-compliance with the allowance test until several years had gone by, and that this could create both compliance difficulties for the source and enforcement difficulties for the regulatory agency. However, after examining the alternatives EPA concludes that its proposed approach is still the best.

8. EPA proposes permitting sources to use “the most appropriate” accounting approach consistent with their normal accounting practices to determine compliance with the RMRR allowance and asks for comment on establishing a consistent set of accounting practices for all such determinations.
9. EPA asks whether to exclude from the costs that must be included in the allowance costs associated with the unanticipated shutdown of equipment, due to component failures or catastrophic failures.
10. EPA proposes not to count expenditures on pollution control equipment against the allowance, unless it is equipment that serves a dual purpose of process equipment and control equipment.

C. *Other Comments*

EPA specifically asks two questions on the relationship between the equipment replacement and allowance approaches. First, would the allowance approach be needed if the equipment replacement test were promulgated? Second, if both tests were promulgated, what should be the relation between them? EPA asks whether projects eligible for the equipment replacement exclusion should count against the allowance, and, if not, what adjustments should be made.

EPA also asks for comment on whether to exclude changes to non-emitting units from coverage under both the equipment replacement and the allowance tests, since “such replacements may not have emissions consequences in the first place and hence would not warrant scrutiny under NSR.” 67 Fed. Reg. at 80303.

Finally, EPA asks for comment on two alternative approaches to codifying RMRR policy – a capacity-based approach and an age-based approach. Under the capacity-based approach, expenditures that did not expand process unit production capacity would be automatically considered RMRR if they did not increase that unit’s maximum achievable hourly emissions, while those that did expand capacity would be evaluated under the existing test. EPA finds some attraction to this approach in that “[t]he primary object of RMRR is to keep a unit operating at capacity and/or availability.” However, as EPA also points out, it can be difficult to define the capacity of a process unit, in particular because “capacity may be defined based on input or output”, while “[n]ameplate capacity of a process unit may vary greatly from the capacity at which the process unit may be able to operate.” 67 Fed. Reg. at 80304.

Under the “age-based” approach, sources would be allowed to make any changes to a process unit that did not increase its “capacity” or exceed the 50% “reconstruction” threshold as long as those changes took place during a “useful life” period probably extending for twenty-five to fifty years. Upon the expiration of their “useful life”, the units involved would have to become “clean units” as defined in the NSR Reform Rule. EPA states:

We see several difficulties in developing this type of approach. The first is defining capacity. The second is establishing the age cut-off for the exclusion. The useful life of equipment is difficult to establish and may vary greatly. The third is that some of the activities that would be allowed at newer sources do not fit within any ordinary meaning of RMRR and some of the activities that would be forbidden at older facilities would come within that meaning. Fourth, some sources may consciously, and appropriately, engage in aggressive RMRR as a way of maximizing the life span of [their] process units, and an age-based approach would discriminate against them.

67 Fed. Reg. at 80305.

III. COMMENTS

A. *General*

Phelps Dodge supports EPA’s proposal in full, with only minor recommended adjustments. We urge EPA to promulgate the equipment replacement test without delay, and to promulgate the RMRR allowance rules, however they may evolve, as soon as they are ready. We also support EPA’s decision to retain a case-by-case approach for sources that want to use it, and for projects that do not fit under either of the “safe harbor” approaches.

B. *The Equipment Replacement Test*

1. The Equipment Replacement Test Would Improve Both the Environment and the Economy by Removing Regulatory Burdens from the Types of Equipment Replacement that are in fact “Routine” in the American Economy
 - a) EPA’s Proposal Would Remove Regulatory Burdens from Efficiency-Improving Beneficial Changes

Equipment replacement that improves efficiency is “routine” in our economy, meaning that it is customary, standard, and usual. In today’s competitive economy, efficiency improvement is essential for any plant that wants to keep up with the market and stay in business. They are environmentally beneficial as well, since virtually without exception the use

of newer technology and more sophisticated production methods allows the production of goods and services with less input of raw materials and less pollution.

“Routine” may also mean activities performed as part of an unvarying plan. But if EPA adopted this approach to “routine” in defining RMRR, it would forbid sources to use the RMRR exclusion for anything they had not done before, thus turning the RMRR exclusion into a road block to innovation, rather than an encouragement to it. Some examples will illustrate this point.

- By replacing an old conveyer with a new one of different design and lay-out, a plant was able to increase its efficiency by improving the flow of raw materials through its process.
- By replacing the doors on a raw material storage shed, a plant was able to shield the contents of the shed from moisture and improve their quality, thus raising process efficiency.
- By installing a new vacuum pump in a paper machine, a paper mill was able to increase its capacity to process recycled paper, reducing costs and benefiting the environment with no increase in emissions rate.

Such replacements are both economically and environmentally beneficial, and “routine” in the sense that any plant that thought of them would make them.

b) EPA’s Proposal Would Also Properly Encourage Other Types of Routine Replacement

In addition to encouraging efficiency improvement, the equipment replacement proposal would provide clarity as to the status of more customary types of equipment replacement that are in fact “routine” under *any* definition of that term, but that EPA has not always been willing to classify as RMRR. The following two examples are activities that should be considered RMRR currently, but have not been treated as such. The equipment replacement test should clarify that these activities are RMRR.

Primary copper smelters may use a sulfuric acid plant as a pollution control device to reduce SO₂ emissions. Sulfur dioxide gases generated during the smelting process are routed to the acid plant where most of it is converted to sulfuric acid. Because of the corrosive nature of the process, significant maintenance is periodically required, including replacement of components of the plant, in order to maintain the effectiveness of the acid plant both as process equipment and as a pollution control device. Additionally, as new technologies develop, more efficient processes and equipment are available to replace current components. The maintenance and replacement of components continually improve the handling of SO₂ and the production of sulfuric acid. While the maintenance and replacement does increase sulfuric acid production, it also improves the pollution control function of the acid plant as well. These activities may increase the emissions of the acid plant, but generally decrease emissions from the smelter unit, *i.e.*, a source wide reduction.

For example, Phelps Dodge over an eight-year period spent approximately \$31 million dollars in maintenance and replacement activities on an acid plant that had been in operation for approximately twenty years at a smelter. The acid plant has a current book value of approximately \$47.5 million. These activities improved both the production of sulfuric acid and the pollution control effectiveness of the plant. Even though these activities were necessary to maintain the plant, Phelps Dodge faced delays in implementation due to permitting requirements. Because of the magnitude of the projects and because some of the changes increased the capacity of the plant, Phelps Dodge was required to seek a permit revision or submit the equivalent of a Section 502(b)(10) notice. The notices were often submitted after extended discussions as a compromise between Phelps Dodge's position that these activities were RMRR and the agency's position that a permit revision was required. These delays, the fruit of current RMRR uncertainty, delayed more effective pollution control.

Over this eight year period, Phelps Dodge replaced the final absorption tower at a cost of \$4.5 million. The new tower is equipped with state of the art candle type demisters which reduced the amount of sulfuric acid mist emitted from the tail stack. The tower was replaced because the old one had deteriorated to the point where it was becoming a safety issue. Phelps Dodge replaced the intermediate absorption tower at a cost of \$5.9 million; also equipped with the candle demisters. Various heat exchangers were replaced at a cost in excess of \$5 million. Phelps Dodge installed a new preheater at the same time it replaced the catalytic converter and other components at a cost of approximately \$10.3 million. The old catalytic converter became unsafe as a result of the structural degradation of the support steel exposed to the hot gasses in the first stage of the converter. The new preheater (which had larger capacity than the old one) and converter increased the conversion efficiency, *i.e.*, the capacity of the acid plant. Phelps Dodge replaced the dry tower due to its deteriorated condition at a cost of \$5.8 million. These projects were essential in order for the acid plant to control emissions and produce sulfuric acid. Phelps Dodge believes these activities should be considered RMRR.

Some Phelps Dodge facilities use industrial boilers. The life of the tubes in those boilers is highly variable, depending on the patterns of boiler use and the fuels used, but is *always* far less than the life of the boiler. Depending on their conditions of use, boiler tubes need replacement at variable intervals, but almost always at intervals of ten years or less. Boiler tubes that are not replaced when they should be make operating the boiler dangerous. The number of boiler tubes replaced at any one time will vary with the circumstances. However, since the boiler must be shut down for tube replacement, it often makes sense to replace more tubes rather than less at any one time, so as to minimize the need for future shutdowns. Such a calculation of replacement numbers is itself "routine."

In the past, EPA has often treated boiler tube replacements inconsistently, classifying the replacement of only a few boiler tubes as "routine", while treating the replacement as "non-routine" if "too many" tubes were replaced. EPA has drawn a vague line between "routine" and "too many." *Any* boiler tube replacement is "routine" in that the need to undertake it is predictable and necessary for safety reasons. The number of tubes replaced at any one time varies with particular circumstances and has no relation to the underlying need for tube

replacement. EPA's "equipment replacement" proposal would properly classify *all* tube replacements as routine as long as they did not change the basic design specifications of the source or amount to a reconstruction.

2. Detailed Comments on the Equipment Replacement Test

a) "Process Unit"

Phelps Dodge supports EPA's general definition of "process unit." This definition has functioned well in the NESHAP program to focus control efforts on those new investment projects that are logical candidates for the installation of technological controls. It should have the same result here. Phelps Dodge also generally supports EPA's proposed industry-specific definitions of "process unit."

b) Efficiency and "Input Specifications"

As just discussed, Phelps Dodge strongly supports EPA's intention to encourage efficiency improvements by granting them RMRR status under the equipment replacement test. Such efficiency improvements, far more than additional add-on controls, are now the key to improved environmental performance at industrial operations, and should be encouraged by our environmental regulatory system. Phelps Dodge recognizes that the right to classify efficiency improvements as RMRR may be abused and therefore must have boundaries.

However, EPA's proposal to forbid changes in "fuel or raw material input specifications" is unacceptably vague, inaccurate, and counterproductive in its current form, at least as applied to complex industrial sources. It is vague because some individual emissions units never had defined "input specifications", while for others those specifications may have been lost. "Process units", which are collections of individual units, will be even less likely than specific individual units to have meaningful "input specifications." It is inaccurate, because even where manufacturers design specifications exist for a unit, they serve to define the unit's guaranteed maximum capacity rather than its actual maximum capacity. Many units routinely and properly operate above their design specifications. As EPA's proposal itself states "[n]ameplate capacity of a process unit may vary greatly from the capacity at which the process unit may be able to operate." 67 Fed. Reg. at 80304. Finally, it is counterproductive because it could be read to forbid some of the efficiency improvements that EPA wants to encourage. Efficiency improvements at a unit often increase its ability to process an input – for example, by reducing down time, or by reducing the time or energy needed to process a certain amount of raw material into a more finished product. EPA cites the replacement of analog with digital controllers at a paper mill batch digester as an example of the "efficiency improving" changes that the Agency wants to encourage. 67 Fed. Reg. at 80301. Phelps Dodge fully agrees. But such a change, by allowing more precise calibration of the digestion process, might well be able to increase the rate at which input chips could be processed. That in turn could lead to arguments, which we know EPA does not want to encourage, that such a change caused a forbidden increase in "input specifications."

Instead, Phelps Dodge believes that EPA should define “design specifications” for purposes of the equipment replacement test as an increase in the maximum achievable hourly emissions of the process unit. That would make sure that no equipment replacement changed the “design parameters” of the unit that are most relevant to air pollution control and NSR, namely the unit’s capacity to emit air pollution. That approach would also make the standards for administering the equipment replacement approach consistent with those for administering the annual allowance approach, and with those for other, long-established Clean Air Act programs like NSPS.

3. Defining the Proper “Exclusion Percentage”

a) Setting the Percentage Itself

Phelps Dodge believes that EPA has properly selected 50% of process unit replacement value as one element of its overall test designed to screen out those projects that fit within an acceptable definition of “routine replacement” from those that do not. Other elements of that test already restrict qualifying changes to those that do not change the basic function of the unit, or create a new “process unit”, or increase its maximum achievable hourly emissions. Those provisions by themselves define a set of “replacement” changes that most sources make routinely. In that context, the 50% test provides an additional safeguard, making sure that those changes that have traditionally qualified as “reconstruction” will have to go through case by case review before being classified as RMRR. That is, if the cost of an activity exceeds 50% of the replacement costs, it does not automatically qualify as RMRR, but would have to satisfy the case-by-case criteria to be considered RMRR.

The replacement of units that have failed catastrophically, however, should not be subject to the 50% constraint. Industrial facilities have every motive to avoid such catastrophic failures, because of the risk of human injury and production interruptions and because of the expense in correcting them. Nevertheless, such failures do take place occasionally, although it is not possible to predict their exact occurrence. It would not be practical to fit every correction of such failures into the 50% constraint. Companies would not abuse such an exclusion, since such catastrophic failures are easy to identify and companies are highly motivated to avoid them.

b) Setting the Accumulation Period

The 50% accumulation test should apply only to individual projects, or to more than one project arising out of the same planning decision, if the permitting authority concludes that the source split them apart to avoid the 50% “trigger.” The NSPS program has operated on that basis for over 20 years, and there have been no complaints about its functioning.

C. The RMRR Allowance Approach

Phelps Dodge offers the following responses to EPA’s specific questions on the RMRR allowance.

1. We Support a “Source-Wide” Approach

Phelps Dodge supports application of the allowance test on the source-wide basis that EPA proposed, and not on a “process unit” basis. Since most facilities keep their accounts on a plant-wide basis, this approach would be easier to administer. In addition, a broader base would tend to smooth out the year-to-year variations of RMRR expenditures at individual process units by aggregating several such units together, thus making compliance with a set annual allowance more predictable. Additionally, as shown in Phelps Dodge’s acid plant example, maintenance on one unit may have benefits for other units. A source-wide approach would encourage this type of beneficial activity.

2. We Favor a Ten-Year Rolling Compliance Period

Phelps Dodge believes that the allowance test should provide for determining compliance over a ten-year averaging period. As the proposal itself suggests, use of a multi-year averaging period would minimize the impact of year-to-year fluctuations in RMRR expenditures. Also, as shown, the maintenance cycle for the acid plant was more than five years. The replacement projects took place after twenty years of operation. A one year compliance period would not be able to cover this type of extended maintenance activity.

EPA’s proposal suggests that the Agency will not consider an averaging period longer than five years. We urge EPA to reconsider. Certain replacements that are clearly “routine” are undertaken at longer than five-year intervals. EPA suggests that even a five-year period might lead to administrative difficulties because it might not be clear for a long time after a change was made that it had exceeded the RMRR allowance. This problem will be short-term and manageable. We assume that any multi-year averaging period would take the form of a “rolling average” as soon as it had been in operation long enough to generate the necessary data. As soon as that happens, it will be equally easy to determine compliance with the annual and with the multi-year approaches, while the multi-year approach will still retain all the other advantages that EPA points out.

3. We Favor a Replacement Cost Approach

Phelps Dodge favors a replacement cost approach for determining the “baseline” value for the RMRR allowance. Approaches based on original capital investment are unfair and unworkable for the reasons described in the preamble. By contrast, insurance valuations provide a reasonable and efficient method of estimating replacement value.

4. We Favor End-of-Year Compliance Determinations

Phelps Dodge believes that only end-of-year determinations of allowance compliance would be administratively workable. Given the frequency with which unplanned RMRR activities occur, EPA’s first suggested alternative – requiring a case-by-case RMRR determination for unplanned activities – would largely negate the benefits of a “safe harbor” rule. In addition, it would saddle every facility that used the allowance approach with a new

government planning requirement. EPA's second alternative – denying use of the allowance test to unplanned activities – is even worse for the same reasons. The compliance issues that EPA points out do not raise significant concerns.

5. Setting the Allowance Percentage

Phelps Dodge believes that the allowance percentage should be set based on actual experience in the sectors to which the percentage applies.

6. Sources Should be Allowed to Use Their Normal Accounting Procedures

Phelps Dodge does **not** favor EPA's suggestion to require use of uniform accounting procedures to measure allowance compliance. Designing such new procedures, debugging them, adapting them to many different industries, educating sources and States to use them, and then actually putting them into use would be a huge undertaking that would grossly outweigh any possible return. Instead, EPA should allow sources to use their normal accounting procedures, and then let the program evolve towards greater uniformity over time if that turns out to be desirable.

7. EPA Should Not Count Pollution Control Equipment Against the Allowance Even if it Increases Productivity

Phelps Dodge supports EPA's proposal to exempt expenditures on pollution control equipment from RMRR allowance limits, so that these expenditures would automatically count as RMRR if they met the other conditions of the allowance test. EPA should take this same approach for pollution control devices that are also process equipment, *e.g.*, acid plants at copper smelters. It will encourage use of pollution control devices.

8. EPA Should Not Count Unexpected "Catastrophic" Failures Against the Allowance

EPA asks for comment on whether sources should be allowed to repair "catastrophic failures" in equipment without having that repair counted against their allowance. Phelps Dodge supports this proposal. Catastrophic failures will take place occasionally even though facilities are highly motivated to avoid them. It would not be practical to fit the correction of such failures into the allowance test. Since the allowance will be set to cover normal and predictable maintenance activities, it will be inadequate to provide for catastrophic failures. The best solution would be to simply exclude them from the test, by providing that steps to correct them do not count against the allowance. It is clear that companies would not abuse such exclusion, since such catastrophic failures are easy to identify and companies are highly motivated to avoid them.

9. EPA Should Not Exclude Non-Emitting Units from the Accounts

EPA's proposal to exclude changes at non-emitting units from its accounts has conceptual appeal. However, we do not favor any comprehensive attempt to exclude such changes for our facilities, though it might work for others. For the final result to be defensible, such changes would have to be excluded from both the numerator and the denominator of the RMRR allowance, and that exclusion would have to be considered in determining the final "allowance percentage." Since the exclusion would therefore be just a change in the form of the allowance approach and not its substance, the main reason for adopting it would be to make administering the allowance test simpler.

We do not think that in fact it would make administration simpler. Since our companies generally gather the necessary data on an aggregated basis, without distinguishing between work on emitting units and work on non-emitting units, a substantial amount of additional work would be needed to find and exclude the figures relating to non-emitting units. In addition, disputes would predictably arise over which units were in fact "non-emitting." However, we believe that EPA should consider excluding major work of a clearly non-emitting nature (constructing a road, putting a new roof on a building) from consideration under the allowance test.

10. EPA Should Reconcile the Equipment Replacement and Allowance Approaches by Giving Them Both Independent Validity

Phelps Dodge suggests reconciling the equipment replacement and allowance approaches as follows: All expenditures on projects that were exempt under the equipment replacement approach would still be counted against the RMRR allowance. However, if RMRR expenditures exceeded the allowance the project would still be RMRR. In other words, they would use up the allowance for other projects, but would not be disqualified themselves if they exceeded it.

D. *Other Comments*

1. EPA Should Not Establish an "Age-Based" Approach to RMRR

Phelps Dodge opposes EPA's proposal for an "age-based" approach to RMRR. Proper maintenance of equipment may extend its life. This should be encouraged. An age-based approach would discourage it.

2. EPA Should Not Establish a "Capacity Based" Approach to RMRR

Earlier in these comments, Phelps Dodge explained why a "capacity based" approach to determining the projects eligible for the equipment replacement test would not be workable at complex manufacturing sources. We believe that EPA's "capacity based" approach would be unworkable for our sources for the same reasons.

Please contact Ken Evans (602) 366-8514 if additional information is needed.