



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7**

11201 Renner Boulevard  
Lenexa, Kansas 66219

March 25, 2022

Mr. Joel Bowers, Esquire  
Barnes & Thornburg LLP  
201 South Main Street, Suite 400  
South Bend, Indiana 46601-1632

Re: U.S. Granules Corporation  
Subpart RRR Applicability Determination Request

Dear Mr. Bowers:

This letter is in response to the U.S. Granules Corporation's (USGC) October 29, 2021, letter requesting an applicability determination from the U.S. Environmental Protection Agency under 40 C.F.R. Part 63 Subpart RRR (National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Secondary Aluminum Production) to the USGC facility in Henrietta, Missouri. In the letter, USGC asserts that Subpart RRR should not apply to the Henrietta facility because the "aluminum granules produced from USGC's processes are not melted by USGC or any of its downstream customers." For the reasons discussed below, EPA disagrees and concludes that this facility is subject to Subpart RRR, based on the information we have received to date.

### **I. Background/History**

As noted in USGC's letter, USGC has worked with Region 7 and EPA's Headquarters on Subpart RRR applicability issues in the past. A brief recap of these interactions may be useful for the purposes of the discussion.

#### **A. Secondary Aluminum Rules Prior to 2015**

The crux of the Subpart RRR applicability issue hinges on whether the definition of "scrap dryer/delacquering kiln/decoating kiln" found at 40 C.F.R. § 63.1503 applies to USGC. Prior to rule revisions EPA made in 2015 (which are discussed below), this term was defined as:

a unit used primarily to remove various organic contaminants such as oil, paint, lacquer, ink, plastic, and/or rubber from aluminum scrap (including used beverage containers) prior to melting.

On October 11, 2002, EPA Region 7 received an applicability determination request from Industrial Safety and Environmental Services, on behalf of USGC, pertaining to Subpart RRR. EPA Region 7 responded on October 22, 2002, stating that "[u]nits that use heat to remove contaminants from scrap aluminum are subject to [Subpart RRR], irrespective of whether the aluminum is subsequently melted," and that this was because "emissions studies performed during rule development show that



dioxin and furans are given off during this process.”<sup>1</sup> While this letter acknowledged that “no melting of aluminum occurred at the Henrietta facility,” that fact was not significant to the applicability determination because, as EPA explained, inclusion of the words “prior to melting” meant only that organic contaminants are generally removed “before the material is placed in a furnace to be melted.” Therefore, under the 2002 applicability determination, whether or not USGC’s aluminum was subsequently melted was of no import.

Although this 2002 determination was vacated on June 23, 2003, EPA soon thereafter issued an interpretative rule on October 1, 2004, to address inconsistent application of Subpart RRR to USGC facilities in two different EPA Regions. See 69 Fed. Reg. 58,837 (Oct. 1, 2004). This 2004 interpretative rule moved away from the discussion of the importance of the process of using “heat to remove contaminants from scrap aluminum,” and instead hinged only on the operation of the phrase “prior to melting” in response to USGC’s own arguments against applicability “that the recovered aluminum must be melted at the same facility” for Subpart RRR to apply. *Id.* at 58,838. Because there were indications that “some of the customers who buy the recovered aluminum granules from [USGC] subsequently melt the purchased material to produce new aluminum products,” *id.*, EPA concluded that USGC’s Henrietta facility was subject to RRR. Because the USGC Henrietta facility’s delamination chambers were clearly covered by the definition of a “scrap dryer/delacquering kiln/decoating kiln” under Subpart RRR, that was as far as the 2004 applicability determination went.

Following an October 25, 2004, letter from USGC requesting reconsideration of the 2004 interpretative rule,<sup>2</sup> EPA issued a revised applicability determination by letter on November 23, 2004.<sup>3</sup> EPA reiterated its interpretation that the definition of “scrap dryer/delacquering kiln/decoating kiln” does not depend on the location of the subsequent melting operation and clarified that the lamination kiln at the Henrietta facility would not be subject to RRR if “none of the aluminum recovered by the delamination kiln ... is subsequently melted by [USGC] or by any of the [USGC’s] customers who purchase this material.” *Id.* Relying on its representations that neither USGC nor its customers melt the recovered secondary aluminum, USGC presumably ceased complying with Subpart RRR at that time. This determination was based on the definition as it existed in 2004 and was limited in scope to the phrase “prior to melting”.

#### B. 2015 Secondary Aluminum Rule Amendment and USGC’s Subsequent Request for a New Applicability Determination

In September 2015, EPA made changes to Subpart RRR that, among other things, changed the definition of “scrap dryer/delacquering kiln/decoating kiln” to:

a unit used primarily to remove various organic contaminants such as oil, paint, lacquer, ink, plastic, and/or rubber from aluminum scrap (including used beverage containers) prior to melting, *or that separates aluminum foil from paper and plastic in scrap.*

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<sup>1</sup> Letter from Donald Toensing, Air Permitting and Compliance, EPA Region 7, to James M. Faulstich, USGC, October 22, 2002.

<sup>2</sup> Letter from Lawrence McHugh, Esq., Barnes & Thornburg, to Scott Throwe, OECA, EPA, October 25, 2004.

<sup>3</sup> Letter from Michael Alushin, Office of Compliance, EPA, to Lawrence A. McHugh, Barnes and Thornburg, November 23, 2004.

80 Fed. Reg. 56,700, 56,739 (Sept. 18, 2015) (emphasis to language added in 2015). 40 CFR Part 63 Subpart RRR (July 1, 2016).

Following an inspection of the Henrietta facility by the Missouri Department of Natural Resources (MoDNR), USGC asserted to MoDNR in a February 12, 2021 letter that the 2015 rule revisions “did not alter” EPA’s rationale that if none of the aluminum recovered by the delamination kilns at the USGC facilities were subsequently melted by USGC or USGC’s customers, the Henrietta facility would (still) not be subject to RRR.<sup>4</sup> MoDNR, in consultation with EPA, responded to this letter by stating that the laminated foil dryer at the Henrietta facility was subject to RRR due to the addition of the “or that separates aluminum foil from paper and plastic in scrap” language to the definition highlighted above.<sup>5</sup> Subsequent correspondence and discussions between USGC, MoDNR, and EPA led to USGC’s formal applicability determination request by letter dated October 29, 2021.

## II. Discussion

### A. Definition of “Scrap Dryer/Delacquering Kiln/Decoating Kiln”

In the preamble to the Subpart RRR rule proposal in 2012, EPA discussed the distinction between melting operations and other steps which may occur at the facility that result in “separation” of aluminum foil from paper and plastic in scrap. As EPA explained in the preamble to the proposed Subpart RRR revisions:

The Secondary Aluminum Production source category includes facilities that produce aluminum from scrap aluminum material and consists of the following operations: (1) *Preprocessing of scrap aluminum*, including size reduction and removal of oils, coatings, and other contaminants; (2) Furnace operations include *melting*, in-furnace refining, fluxing and tapping; (3) Additional refining, by means of in-line fluxing; and (4) Cooling of dross. . . .

Scrap aluminum is often preprocessed *prior to melting*. Preprocessing steps may include shredding to reduce the size of aluminum scrap; drying of oily scrap such as machine turnings and borings; and/or *heating in a scrap dryer, delacquering kiln or decoating kiln* to remove coatings or other contaminants that may be present on the scrap. Heating of high iron content scrap in a sweat furnace to reclaim the aluminum content is also a preprocessing operation. Crushing, shredding, and grinding operations are used to reduce the size of scrap aluminum. Particulate matter and HAP metals emissions are generated as dust from coatings and other contaminants contained in the scrap aluminum as they are processed....

Painted and/or coated materials are processed in a scrap dryer/delacquering kiln/decoating kiln to remove coatings and other contaminants that may be present in the scrap *prior to melting*. Coatings, oils, grease, and lubricants represent up to 20 percent of the total weight of these materials. Organic HAP, D/F, and inorganic HAPs including particulate metal HAP are emitted during the drying/delacquering/decoating process. . . .

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<sup>4</sup> Letter from Joel T. Bowers, Barnes & Thornburg LLP, to Jennifer Shimamoto, MoDNR, February 12, 2021.

<sup>5</sup> Letter from Heather Lehman, MoDNR, to Don Moore, USGC, April 1, 2021.

Process (i.e., melting, holding or refining) furnaces are refractory-lined metal vessels heated by an oil or gas burner to achieve a metal temperature of about 760 C (1400 F). ... Process furnaces may process contaminated scrap which can result in HAP emissions. ... Process furnaces are significant sources of HAP emissions in the secondary aluminum industry. An uncontrolled melting furnace which processes contaminated scrap and uses reactive fluxes emits PM (of which some fraction is particulate metal HAP), HCl, and D/F.

77 Fed. Reg. 8,576, 8,581(Feb. 14, 2012) (emphasis added). Thus, there is a clear distinction between preprocessing operations – which do not include melting – and melting processes. Further explaining the rationale for the proposed definition change, EPA stated:

We are proposing revisions to the definition of scrap dryer/delacquering kiln/decoating kiln to clarify that thermal delaminating of aluminum scrap and mechanical granulation of the recovered metal are affected sources under Subpart RRR. Heat is used to separate foil from paper and plastic in scrap. These sources operate chambers with a maximum temperature of 900 degrees F and with no melting of the recovered aluminum. Under the proposed definition, subsequent melting of recovered aluminum need not occur at the same facility that conducts the recovery operation.

(emphasis added). *Id.* at 8,603. And in the table summarizing the technical corrections and clarifications to Subpart RRR, one of the purposes of this definition change was described as clarifying the “definition of Scrap Dryer/Delacquering/Decoating Kiln to include delamination of aluminum from paper or plastic.” *Id.* at 8,597. These statements in the notice of proposed rulemaking make it plain that subsequent melting of the product – either onsite or by downstream customers – is no longer the only determinative factor regarding Subpart RRR applicability to delaminating chambers such as USGC’s.

In sum, the use of the disjunctive “or” in the current definition indicates that there are now two different and independent conditions under which a scrap dryer/delacquering kiln/decoating kiln is covered by Subpart RRR.

Based on this regulatory history, EPA disagrees with USGC’s assertion that the rule revisions in 2015 “had the same aim” as the 2004 interpretive rule. The 2015 Subpart RRR revisions were intended to address other parts of the aluminum production process *besides* melting, namely, thermal delaminating and mechanical granulation. It is clear that the delamination unit used by U.S. Granules perform the same general type of operations for recovery of aluminum from scrap that EPA intended to regulate in the 2015 Subpart RRR revisions.

#### B. Application to Henrietta Facility

There are several statements in the correspondence between USGC, EPA, and MoDNR that USGC’s Henrietta facility does in fact conduct “thermal delaminating” and separation activities. For instance:

- **Mr. Randy Martin of Industrial Safety and Environmental Services told EPA Region 7 in August 2002 that the Henrietta plant “has a processing chamber which delaminates aluminum foil from paper and plastic to ultimately produce aluminum granules. The delamination chamber operates at 900 degrees Fahrenheit.”<sup>6</sup>**

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<sup>6</sup> Letter from Donald Toensing, Air Permitting and Compliance, EPA Region 7, to James M. Faulstich, USGC, Oct. 22, 2002.

- **In USGC’s Initial Notification Report submitted to MoDNR on March 21, 2003, in providing a brief description of the nature, size, design and method of operation of the plant, USGC noted: “Scrap Delaminator (Nichols Furnace); at approx. 700-900 F, remove paper (or plastic) backing from aluminum foil (rate < 4 tons/hour).”**
- **USGC’s process schematic from October 28, 2021 indicates that it maintains a temperature that is “high enough to separate aluminum foil from laminates” but is “well below the melt temperature of the aluminum.”**

Based on these facts, it is EPA’s opinion that the Henrietta facility is subject to Subpart RRR, based on the revised 2015 definition of “scrap dryer/delacquering kiln/decoating kiln.” To be clear, this opinion applies only to the laminated foil dryer at the Henrietta facility, since it meets the definition of “scrap dryer/delacquering kiln/decoating kiln.” In contrast, any other dryers (e.g., virgin dryers) located at the facility remain not subject to Subpart RRR per the November 2004 applicability determination, if they are not used to “separate[] aluminum foil from paper and plastic in scrap.”

#### C. Environmental Benefits

In its letter, USGC argues that Subpart RRR “regulates HAP emissions from secondary aluminum production facilities that are area sources of HAP only with respect to emissions of dioxins/furans (D/F),” and then, based on stack test results from December 2002 that indicated non-detect levels for D/F and MoDNR’s subsequent determination in 2003 that USGC was at that time in compliance with Subpart RRR,<sup>7</sup> USGC suggests that continuing to regulate the Henrietta facility under Subpart RRR will “not provide the environmental benefit that the Rule was designed to implement.”

While the 2002 stack test result is encouraging, a single data point from nearly twenty years ago is of marginal value in determining if the Henrietta operations pose an environmental threat today. If USGC has conducted stack tests with similar results since 2002, please submit those to EPA. However, for purposes of compliance with the NESHAPs for Secondary Aluminum Production, it is not relevant to an applicability determination if a source in the category is currently complying with the applicable emission limits.

#### D. Cost of Compliance

Lastly, USGC asserts that compliance with Subpart RRR will result in “significant costs” to USGC. EPA acknowledges that compliance with Subpart RRR imposes costs on affected facilities; however, that does not excuse compliance with the law.

### III. Conclusion

As stated above, EPA respectfully disagrees with USGC’s assertion that the 2015 rule revisions did not result in any change regarding Subpart RRR applicability to its Henrietta facility. Based on the revised rule definitions and the other reasons stated, and based on the information provided to date, EPA concludes that the Henrietta facility is subject to RRR.

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<sup>7</sup> Letter from Steven Feeler, Air Pollution Control Program, MoDNR, to Archie Martin, USGC, May 13, 2003.

This applicability determination is a final enforceable action subject to judicial review under Clean Air Act section 307(b)(1). The EPA may alter this determination in the future if USGC provides additional information that EPA was previously not aware of, or in accordance with applicable regulations, if the Agency determines that it is warranted. This response was developed in coordination with the EPA's Offices of Air Quality Planning and Standards, Enforcement and Compliance Assurance, and General Counsel. If you have any questions regarding this action, please contact Keith Johnson at (913) 551-7737 or at [johnson.keith@epa.gov](mailto:johnson.keith@epa.gov).

Sincerely,

Digitally signed by Algoe-Eakin, Amy

Date: 2022.03.25 15:12:36 -05'00'

Amy Algoe-Eakin

Chief

Air Permitting and Standards Branch

Air and Radiation Division