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July 28, 1989

Mr. Steve Spaw, P.E.
Deputy Executive Director
Texas Air Control Board
6330 Hwy. 290 East
Austin, Texas 78723

RE: Request for PSD Applicability Determination
Golden Aluminum Company, San Antonio, Texas

Dear Mr. Spaw:

I am writing in response to your July 25, 1989, request for a Prevention of Significant Deterioration (PSD) applicability determination for the above-referenced source. While I agree that Golden Aluminum's facility, as proposed, is properly considered a "secondary metal production plant", I would like to take this opportunity to explain the basis for this determination. Enclosed please find a copy of our PSD applicability determination, which goes into considerable detail in explaining the regulatory background and EPA's interpretation of the applicable PSD regulations.

Should you have any further questions concerning this matter, please do not hesitate to call me.

Sincerely yours,

William B. Hathaway, Director
Air, Toxics and Pesticides Division

Enclosure

cc: Elizabeth A. Hurst, Jenkins & Gilchrist
Joseph S. Lamb, Golden Aluminum

PSD Applicability Determination
for Golden Aluminum Company
San Antonio, Texas

BACKGROUND

Golden Aluminum Company, a subsidiary of Adolph Coors Company, is proposing to construct a new facility in San Antonio, Texas. The proposed source will include four melting furnaces and a rolling mill. The feedstock for the plant will consist of used aluminum beverage cans, scrap aluminum and small amounts of primary (refined) aluminum. The melting and rolling will be a continuous, integrated process, and the plant will not have the capability to produce aluminum ingots from the furnaces. Although the predicted emissions have not been clearly established, it appears that the particulate emissions will exceed 100 tons per year. Golden Aluminum and EPA Region 6 agree that if the proposed plant is determined to be a "secondary metal production plant,"

then PSD review would be required if the potential to emit any pollutant regulated by the Clean Air Act exceeds 100 tons per year. However, Golden Aluminum believes its plant will not be a "secondary metal production plant" because the primary end product or service will be flat rolled aluminum, the melting operation is merely a support for the primary activity (i.e. the production of rolled aluminum), and no ingots or other products will be made as intermediates from the molten aluminum.

ISSUE

The issue presented by the facts described above is whether or not Golden Aluminum's proposed plant is a "secondary metal production plant" within that term's meaning in Section 169(l) of the Clean Air Act and 40 C.F.R. } 52.21(b)(i)(a).

ANALYSIS

If a proposed "stationary source" will have the "potential to emit" more than 100 tons per year of any pollutant regulated under the Clean Air Act (Act), then it will be subject to PSD review provided the source falls within one of the 28 listed source categories found in 40 C.F.R. } 52.21(b)(1)(i)(a). "Secondary metal production plants" are among the 28 listed source categories; however, neither the Clean Air Act nor the federal PSD regulations (found at 40 C.F.R. } 52.21) define that term. Review of the legislative history provides little guidance on the meaning of "secondary metal production plants"; however, it is obvious that Congress compiled the list of 28 source categories based upon information that such sources contributed significantly to ambient air concentrations of air pollutants. Thus, Congress saw the need to list such sources specifically as being subject to PSD if the source's

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potential to emit would exceed 100 tons per year. In fact, the Senate suggested that additional sources be examined to see whether they should be added to the list of 28 source categories through additional legislation [See Senate Report 127, 95th Cong. 1st Session, 96-97 (1977)]. "Secondary metal production plants" typically emit large amounts of particulates, as evidenced by Golden Aluminum's own estimates that the proposed plant would emit several thousand tons of particulates without control equipment. Thus, it is clear that Golden Aluminum's plant is the type of source Congress intended to be covered by the PSD provisions of the Act if it has the potential to emit more than 100 tons per year of any regulated pollutant.

Another source of information relevant to the proper categorization of the proposed plant is the Standard Industrial Classification (SIC) Manual. Although the term "secondary metal production plant" does not appear in the SIC Manual, it is closely reflected by SIC Code 3341 - "Secondary Smelting and Refining of Nonferrous Metals." A source is classified under SIC Code 3341 if it is primarily engaged in recovering nonferrous metals and alloys from new and used scrap and dross or in producing alloys from purchased refined metals. Thus, a plant that is primarily engaged in recovering aluminum from new or used scrap would be considered a secondary aluminum smelter. It is interesting to note that the form the smelted aluminum takes is not determinative of whether or not the plant is a secondary smelter; rather, a secondary smelter is defined by the principal activity or process and not the final product resulting from that process. Since the smelting process, not the rolling process, causes the majority of the particulate emissions from the source, it is only logical that Congress intended EPA to focus on those activities which could cause significant emissions of pollutants and hence, significant deterioration of air quality. Thus, EPA interprets the Congressional intent in determining whether or not a source is within one of the 28 listed source categories, as based upon the source's pollutant emitting activity (e.g. smelting) rather than

the source's finished product.

Golden Aluminum argues that its proposed plant is primarily engaged in rolling aluminum. This would be true if the plant was merely taking primary aluminum (e.g. aluminum ingots) and heating it up to make it malleable and then rolling it into sheets or coils. Such a process would not be considered a "secondary metal production plant" but rather an aluminum rolling mill (See SIC Code 3353). However, Golden Aluminum is proposing to smelt the plant's feedstock, over 90% of which is in the form of used beverage containers and scrap aluminum, in four melting furnaces. Based upon these facts, EPA finds that the smelting operation (i.e. secondary metal production) is the primary pollutant-generating activity of the plant, and the rolling mill is merely the process by which the owner has chosen to form the recovered aluminum into an end product.

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Golden Aluminum also points to the language in the preamble to the current PSD regulations that describes how the agency should classify a source (See 45 Fed. Reg. 52895, August 7, 1980). Golden Aluminum claims that EPA should look to the principal product of the plant (i.e. rolled aluminum) in categorizing the source. However, as discussed below, this argument must fail for two reasons.

First, the preamble language referred to concerns the scope of the categorization of a source under the SIC Code. This section of the preamble addressed how EPA would group pollutant-emitting activities at a site. EPA chose to group together as one "source" all pollutant-emitting activities falling under the same two-digit (Major Group) SIC Code. However, in order to address those situations involving plants with several support operations or several totally unrelated final products EPA stated that support activities and nonprimary products should be grouped with the two-digit SIC Code of the plant's principal activity or product for purposes of defining the scope of the "stationary source" under 40 C.F.R. } 52.21(b)(5),(6). In this case, both "Secondary Smelting and Refining of Nonferrous Metals" (SIC Code 3341) and "Aluminum Sheet, Plate, and Foil" (SIC Code 3353) are within the same two digit SIC Major Group - "Primary Metal Industries" (Major Group 33). Thus, the preamble language referred to by Golden Aluminum cannot assist in a determination whether a proposed source is within one of the 28 listed source categories; rather, the language simply concerns which pollutant emitting activities at a plant should be grouped together to determine whether the proposed plant will be considered a single major "stationary source."

Second, Golden Aluminum's argument also fails because it would be illogical for a source clearly within one of the 28 listed categories to fall outside the listed category by merely altering the form of its end product or by the addition of certain processes that do not significantly alter the pollutant-emitting characteristics of the source. For example, under Golden Aluminum's logic, a primary copper smelter (one of the 28 listed categories) could integrate a copper wire facility into the smelter and thus the plant becomes a copper wire plant (not one of the 28 listed category sources). Likewise, Golden Aluminum would lead us to believe that if its plant made ingots from the aluminum scrap and sold such ingots, then it would be a "secondary metal production plant," but if it added a continuous caster to its process later, then it would no longer be characterized as a secondary metal production plant but rather an aluminum rolling mill. Clearly, Congress could not have intended the PSD program to be interpreted in this manner and EPA cannot allow for such an interpretation either; to do so would permit circumvention of the PSD program.

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Finally, Golden Aluminum contends that EPA has classified other plants which smelt used aluminum cans and form aluminum coils as "aluminum rolling mills" not "secondary metal production plants." However, EPA Region 6 has confirmed that all such plants, with the exception of the Alumax facility in Texarkana, Texas, referred to by Golden Aluminum have the potential to emit less than 100 tons per year for each pollutant regulated under the Clean Air Act and thus proper categorization of the source was not relevant to the permitting decisions since in PSD did not apply in any event. With respect to the Alumax facility in Region 6, EPA determined that the primary activity of the plant was rolling aluminum since more than 50% of the feedstock would consist of aluminum ingots which would not be fed into a melting furnace but rather were merely preheated to make them malleable enough to roll into coils. Unlike Alumax, Golden Aluminum intends to smelt all of its feedstock, which will consist of over 90% aluminum scrap and used beverage containers. EPA finds that this is a reasonable basis upon which to distinguish between the applicability determination and this case.

Golden Aluminum also contends that other agencies and other programs administered by EPA (e.g. the Clean Water Act) have classified similar facilities as aluminum rollings mills. However, it must be understood that other statutes have different goals and criteria for the classification of sources consistent with their respective statutory purposes. Accordingly, those criteria are not determinative under the Clean Air Act. In other words, one agency or program may call the proposed source a rolling mill while another may consider it secondary metal production plant; both may be correct for their specific program.

CONCLUSION

Golden Aluminum's proposed plant is properly categorized as a "secondary metal production plant" and thus subject to PSD review if the plant will have the potential to emit more than 100 tons per year for any pollutant regulated under the Clean Air Act.