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Via Regulations.gov

U.S. Environmental Protection Agency
Office of Land and Emergency Management
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Comments on EPA Proposed Rule, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, Docket ID No. EPA-HQ-OLEM-2017-0463

We are submitting comments on behalf of Nucor Corporation ("Nucor") regarding the U.S. Environmental Protection Agency's ("EPA") proposal to regulate aerosol cans under the universal waste program. EPA, "Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations," 83 Fed. Reg. 11654 (Mar. 16, 2018).

Nucor is engaged in steel manufacturing and steel product manufacturing and fabrication throughout the Country. To support these processes, Nucor uses various aerosol can products. After use, these products become waste and would be subject to EPA's proposal. In general, Nucor is supportive of EPA's proposed rule. Managing aerosol cans as universal waste will ease the regulatory burden of handling this waste stream while ensuring requisite environmental protection. Moreover, codifying EPA's longstanding policy to allow aerosol can puncturing provides needed certainty to the regulated community. Nucor has the following comments requesting clarification on the applicability and scope of the rule.

1. EPA should clarify that waste aerosol cans may be accumulated as universal waste prior to puncturing.

Nucor understands the rule to offer two aerosol can management solutions. First, a generator may manage intact aerosol cans as universal waste. Second, a generator may puncture and recycle the aerosol cans, collect the residuals, subject them to a hazardous waste determination and manage them accordingly.

Neither the preamble nor the proposed regulatory language directly addresses the acceptability of combining these approaches. Under a common scenario, a generator would initially collect intact, expended aerosol cans in a universal waste container. Then, once a sufficient amount has collected, a RCRA-trained operator would remove the cans from universal waste management and subject them to the authorized puncturing procedures.

This procedure has many benefits. It would ensure that waste aerosol cans are managed at all stages of accumulation in compliance with universal waste handler or hazardous waste generator standards. It allows facilities to limit the amount of personnel that must be trained. If the proposed procedure were not permitted, the generator would have to train every individual who uses aerosol cans to operate the puncture device. Alternatively, if universal waste accumulation prior to puncturing is permitted, generators would be able to leave the important task of puncturing to a select few with sufficient training and experience. The proposed procedure would also allow facilities to minimize process interruptions associated with aerosol can puncturing. While process interruptions may occur whenever an aerosol can is expended, these interruptions would be minimized if a facility can consolidate the cans and punctures them at a separate time.

Nucor does not read the rule to prohibit generators from combining these approaches. Nucor requests clarification from EPA that this approach is acceptable. Nucor also requests that EPA confirm that quantities of universal waste storage of aerosol cans near a puncturing device would not go toward the 55-gallon limit for satellite accumulation areas. Instead, only the residuals collected in the puncturing device would go toward that 55-gallon limitation.

2. EPA should clarify that hazardous waste generators may rely on the statements of the aerosol can puncture device and filter manufacturers.

Under the proposed rule, generators must use a "commercial device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof." 40 C.F.R. §§ 273.13(e)(3)(i), 273.33(e)(3)(i) (proposed). In the preamble discussion of this requirement, EPA asserts it is the operator's responsibility to ensure VOC "breakthrough is not occurring." 83 Fed. Reg. at 11661.

Nucor does not believe generators are in the best position to question the accuracy of a filter manufacturer's representations. Manufacturers already provide parameters to assist generators in determining filter efficacy. These include numerical recommendations (e.g., 600-700 punctured cans per filter) or visual indicators on the filters themselves. The rule should authorize generators to rely on these representations. Without this ability, generators of aerosol can waste that wish to puncture cans will have to choose between relying on manufacturer recommendations at their own peril, adopting an extremely conservative VOC filter change schedule, installing sensors to continually monitor the carbon filter exhaust, or adopting procedures to weigh the carbon filter before and during use to determine when it has reached capacity. This will disincentivize many generators from taking advantage of the puncturing allowance. As such, it is contrary to EPA's goal to "ease regulatory burdens" and "promote the collection and recycling" of aerosol cans. 83 Fed. Reg. at 11654.

EPA routinely authorizes operators to rely on manufacturer recommendations. For example, EPA has permitted generators to rely on safety data sheets compiled by manufacturers to make hazardous waste determinations. *See, e.g.*, 81 Fed. Reg. 85732, 85750 (explaining that "a review of an SDS may suffice because the identification of the constituents and their concentration ranges may make it clear whether the chemical is or is not a hazardous waste upon

disposal"). Additionally, under Part 265, Subpart CC, an owner or operator may open a "safety device" (e.g., a pressure relief valve) on a container containing hazardous waste whenever "the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on *manufacturer recommendations*" or other factors. 40 C.F.R. § 265.1087(c)(3)(v); *Id.* § 265.1081 (emphasis added).

EPA has authorized similar practices in the air context. *See,e.g., Id*. § 63.11516 (requiring operators to operate all equipment, including pollution control equipment, related to dry abrasive blasting, machining, dry grinding and polishing, spray painting, and welding according to manufacturer's "instructions" and "specifications"); *Id.* §§ 63.773, 63.1283 (requiring the inspection and maintenance plan for each control device to contain the "manufacturer's recommendations for ensuring proper operation of the device"); *Id.* § 60.258 (requiring operators to certify that the manufacturer's recommendations were followed for the dust suppressant system).

These examples demonstrate that EPA does not have inherent trepidation about relying on manufacturer statements. Instead, EPA has apparently determined that reliance on manufacturers in this context is not appropriate. However, according to EPA's own admission, the agency has only subjected a single aerosol can puncturing solution to scrutiny under the Environmental Technology Verification program. 83 Fed. Reg. at 11661. This is not a sufficient basis to shift the burden of verifying equipment efficacy to users of the product. If EPA suspects that additional verification of manufacturer statements is needed, it should direct its efforts towards those manufacturers, not the individual users.

For these reasons, Nucor requests EPA amend the proposed rule to allow generators to rely on manufacturer recommendations, both in the form of visual indicators of filter status and quantitative parameters.

3. EPA should not establish further limitations on puncturing and draining of aerosol cans.

When a generator punctures an aerosol can, any residuals collected that qualify as hazardous waste are subject to all existing regulations in Parts 260 through 272. 40 C.F.R. § 273.13(e)(3)(v), 273.33(e)(3)(v) (proposed). Parts 260 through 272 sufficiently address concerns raised by EPA and states regarding puncturing of certain types of aerosol can products. The concerns raised include incompatibility and the hazardous nature of the contents of certain cans. 83 Fed. Reg. at 11661-62.

Incompatibility. Generators of hazardous waste are already subject to stringent compatibility standards. To address the risk that certain components of the puncture station may be incompatible with aerosol can contents, current regulations require generators to "use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired." 40 C.F.R. §§ 262.15(a)(2); *see also Id.* §§ 262.16(b)(2)(ii),

262.17(a)(1)(iii). To address other incompatibility risks, existing regulations prohibit "[i]ncompatible wastes, or incompatible wastes and materials" from being "placed in the same container," except under limited circumstances. *Id.* § 262.15(a)(3); *see also Id.* §§ 262.16(b)(2)(v), 262.17(a)(1)(vii). Additional incompatibility provisions apply to central accumulation areas. *Id.* Moreover, the proposed rule requires a written procedure that addresses segregation of incompatible wastes. 40 C.F.R. § 273.13(e)(3)(ii), 273.33(e)(3)(ii) (proposed).

Hazardous Contents. No prohibitions are warranted due to the hazardous nature of the contents of certain cans. The proposed regulations require a written procedure detailing how to "safely" puncture and drain aerosol cans. 40 C.F.R. § 273.13(e)(3)(ii), 273.33(e)(3)(ii) (proposed). Thus, if it is unsafe to puncture a certain type of product, the existing rules already prohibit this. Because the residual must be subjected to a hazardous waste determination and managed accordingly, all hazardous residuals are also required to be managed safely and responsibly under existing regulations. Of course, if EPA has information indicating certain products present greater safety risks than others, it should make this information available so that the regulated community may make an informed decision as to whether its written procedures are adequate. In the extreme case that a product cannot be punctured safely under any circumstances, Nucor would support a ban on puncturing that product.

4. Any puncture prohibition for commercial processors should not apply to co-generated hazardous waste or LQGs receiving VSQG waste under 262.17(f).

EPA has solicited comment on whether it should ban commercial processors from taking advantage of the puncturing allowance as California has in its universal waste rule. 83 Fed. Reg. at 11662. Nucor is concerned that California's puncturing prohibition is overbroad. California's ban applies to all commercial processors, a term EPA interprets to mean any "person that processes aerosol cans received from other entities in exchange for compensation." 83 Fed. Reg. at 11662. According to California guidance, commercial processors include "individuals from another generator's site." *See* California Department of Toxic Substances Control, *Aerosol Can Waste Management*, at 3 (Oct. 2015).

Nucor does not believe the puncturing prohibition should apply to hazardous waste co-generators or LQGs managing VSQG waste under the consolidation provisions at 40 C.F.R. § 262.17(f) (the "consolidation rule"). Thus, if EPA adopts a puncturing ban for commercial processors, it should specifically exclude these entities from the commercial processor definition.

Co-generated Waste. A generator should not be considered a "commercial processor" because it punctures aerosol cans of a co-generator or other related entity.

Under EPA's longstanding co-generation policy, hazardous waste co-generation occurs when two or more parties satisfy the "generator" definition for a single waste stream. 45 Fed. Reg. 72024, 72026 (Oct. 30, 1980). This policy encourages cooperation among co-generators to ensure proper management. As co-generators of a single waste stream, facilities may agree to shift responsibility for waste management to a single generator. *Id*. Similarly, if multiple entities are involved in the waste generation process, but only one party meets the technical definition of

hazardous waste generator, EPA's policy is to allow either party to assume the generator responsibilities, so long as the true generator's EPA I.D. number is used. RO 11372.

Multiple generators may be involved in generating aerosol can waste at a single facility. For example, a contractor hired by a manufacturer to perform maintenance at the facility uses aerosol products required for the maintenance activity. Under this scenario, both the manufacturer and the contractor may be considered hazardous waste generators of the aerosol can waste stream. Regardless, both parties have a role in the hazardous waste generation process and a stake in how the waste is managed. To increase the likelihood of proper management, the co-generator policy allows either the manufacturer or the contractor to assume generator responsibilities for the aerosol can waste.

Under California's interpretation, the generator assuming responsibility for the waste may be considered a commercial processor. Goods and/or services are being exchanged, and one benefit of that bargain may include the agreement to manage the waste generated. EPA should not adopt a rule that would reach this conclusion. Doing so would prevent co-generated aerosol cans from being managed under the puncturing guidelines, discourage co-generation agreements, and reduce the overall likelihood that waste aerosol cans will be managed properly. On the other hand, if EPA exempts these types of entities from the commercial processor definition, it will ensure that the more capable generator assumes the hazardous waste generator responsibilities and provide greater protection against risks to the environment and human health.

Nucor thus requests that EPA adopt a definition of commercial processor that would allow co-generators or entities similarly related to cooperatively manage aerosol can waste streams under the puncturing procedure.

LQG-VSQG Consolidated Waste. A generator should not be considered a "commercial processor" because it punctures aerosol cans received from a related VSQG under the consolidation rule.

Under the consolidation rule, LQGs "may accumulate on site hazardous waste received from very small quantity generators under control of the same person" provided certain conditions are met. 40 C.F.R. § 262.17(f). When EPA adopted this standard, it determined it would "improve overall tracking, oversight and management of the hazardous waste"; reduce "overall waste management costs"; reduce "potential financial liabilities"; "increase potential opportunities for hazardous waste recycling"; "reduce the overall time that the VSQG accumulates hazardous waste on site"; "give companies flexibility in allocating labor and resources"; and "reduce the potential risk to human health and the environment." 81 Fed. Reg. 85732, 85773 (Nov. 28, 2016).

EPA must be careful to preserve these benefits. Because an LQG receiving VSQG waste would be an "individual from another generator's site," the LQG may qualify as a commercial processor under California's existing program, which would prevent it from enjoying the benefits of the consolidation rule. We do not believe this is EPA's intent and thus urge the

agency to clearly exempt LQGs managing VSQG waste under 262.17(f) from any enacted prohibition.

Conclusion

In general, Nucor is supportive of EPA's proposed rule. Nucor appreciates the opportunity to express these concerns and looks forward to EPA's response.

Sincerely,

Brandon Curtis
Attorney for Nucor Corporation