

**AFS Meeting with EPA Region V - Subpart UUU**  
**February 1, 2013**  
**(1:00 pm – 3:00 pm Central)**

**Participants**

AFS: Jeet Radia, McWane  
Bryant Esch, Waupaca Foundry  
Dan Oman, Haley and Aldrich  
Craig Schmeisser, Haley and Aldrich  
Jeff Hannapel, The Policy Group

EPA: Brain Dickens, Chief of Air & Radiation Division  
Mickey Jencius, Enforcement  
Kevin Vilaneer (sp), Enforcement  
Timothy Thurlow - Associate Regional Counsel  
Padmavati Bending - Associate Regional Counsel  
Patrick Miller - Environmental Engineer  
Alexandra Letuchy - Environmental Engineer

**Introductory Remarks**

Jeff Hannapel thanked EPA for meeting with us and noted that the applicability of Subpart UUU had a long and confusing history. He noted that AFS does not believe that EPA ever intended Subpart UUU to apply to foundries and the rulemaking history of Subpart UUU is consistent with this position. AFS has been looking for clarity on this issue and EPA HQ, the different EPA Regions and the states have taken inconsistent positions regarding the applicability of Subpart UUU to foundries over the past ten years. AFS secured a legal opinion from a DC law firm that confirmed that Subpart UUU was never intended to apply to foundries and to apply the requirements of Subpart UUU would be a violation of the Administrative Procedure Act. AFS has engaged EPA in numerous discussions and attempts to clarify the issue, but has been unsuccessful to date. In addition, AFS is looking for an opportunity to challenge EPA's position on the applicability of Subpart UUU to foundries. Mickey Jencius asked what type of challenges AFS was considering, and Jeff replied a challenge to a final agency action either a rulemaking decision or an enforcement action taken against a foundry for a violation of Subpart UUU.

EPA Region V informed us that they really did not understand why we were meeting with them. They told us that they were willing to listen to our issues, however they were not necessarily going to respond to our questions if they believed the questions were outside the scope of their jurisdiction. They also asked us why we decided to meet with them instead of meeting with

EPA HQ. Jeff Hannapel responded that AFS was directed to meet with Region V Enforcement staff before we met with EPA HQ.

### **Applicability of Subpart UUU to Foundries**

Jeff Hannapel summarized that as part of the original rulemaking for Subpart UUU EPA identified numerous industry Source Categories that were subject to the requirements of Subpart UUU. Even though foundries were # 17 on priority list of source categories for the NSPS program, EPA did not include foundries in the source categories for Subpart UUU. Accordingly, EPA provided no notice that Subpart UUU applied to foundries and no opportunity for foundries to comment on its possible inclusion in Subpart UUU. Subsequent to the promulgation of Subpart UUU rule, EPA decided that Subpart UUU should apply to foundries because they have units that process industrial sand that could meet the definition of calciners and dryers in UUU.

In addition, AFS has not had an opportunity to challenge EPA's interpretation because there was either no final agency action to challenge or the transaction costs of challenging EPA was too high for any single small foundry to justify an expensive challenge. Recognizing that we still have some unsettled issues with regard to the applicability of Subpart UUU to foundries, Scott Thrower of EPA OECA in Washington suggested that AFS meet with Region V on this topic because that was the source of the current enforcement actions.

Dan Oman summarized some of the history of EPA's misinterpretation of the applicability of Subpart UUU to foundries. He noted that it had started with a 2003 letter from Gary Mosher of AFS letter requesting clarification that Subpart UUU was not meant to apply to foundries. EPA responded in an ADI stating that Subpart UUU did apply to thermal and reclamation units because they processed industrial sand and met the definition of a calciner. In a subsequent ADI in 2004, EPA reaffirmed the applicability of Subpart UUU to foundries based on the removal of combined and/or uncombined water from the industrial sand processed at foundries. This interpretation appeared potentially to subject more units and processes at foundries to Subpart UUU – where even a molecule of water was driven from the sand as part of the process.

In 2006 Michigan DEQ initiated an enforcement action against a facility with a thermal foundry sand reclamation unit. The Foundry Association of Michigan initiated discussions with DEQ and AFS began discussions with EPA in Washington regarding this enforcement action based on Subpart UUU. EPA Deputy Administrator, Marcus Peacock, was also involved with these discussions. During this time, the Michigan enforcement action was deferred until the issue could be resolved.

### **EPA Rulemaking to Exempt Foundries from Subpart UUU**

As a result of these discussions EPA agreed in 2008 to propose revised language for Subpart UUU exempting foundries. The revised regulatory language for Subpart UUU was included in the rulemaking package for the revised Subpart OOO. Based on the proposed rule language

and public comments, EPA agreed to exclude the following from Subpart UUU requirements: “processes used solely for the reclamation and reuse of industrial sand from metal foundries.”

In April 2009 when the Subpart OOO rule was finalized, EPA indicated that it was not taking final action on the revised Subpart UUU regulatory language. In discussions with EPA officials, no final action was taken on the revised Subpart UUU regulatory language due to concerns over proper notice and comment. Specifically, EPA indicated that it was concerned that the Subpart UUU provision was “buried” within the Subpart OOO rulemaking, despite the fact that public comments were received on the Subpart UUU proposed revisions.

Jeff Hannapel noted that it was ironic that no final action was taken on the proposed revisions to Subpart UUU due to concerns over notice and comment, even though the proposed change was specifically noticed in the Federal register and EPA received public comments on the revisions – particularly when foundries were not afforded any public notice or opportunity for comment on the applicability of Subpart UUU to foundries.

Dan Oman and Jeff Hannapel continued to summarize that following the Subpart OOO rulemaking, EPA officials and AFS had a “gentlemen’s agreement” that EPA would not actively enforce Subpart UUU against foundries. Foundries may be asked by states and EPA Regions to include Subpart UUU provisions when the facility’s permit was up for renewal. AFS understood that this agreement was not binding, but it was a good faith understanding of the parties following the agency’s failure to take any final action on the revisions to Subpart UUU to exclude foundries.

In 2010 Region V began enforcement of Subpart UUU at foundries in Region V states. Dan Oman noted that the use of thermal sand reclamation units has increased in the metal casting industry because the sand used by foundries is now being used for hydraulic fracturing, thereby increasing the cost of the sand. With thermal sand reclamation units, foundries can reuse more sand and have to purchase less virgin sand. Accordingly, the applicability of Subpart UUU to foundries can become a much larger issue as foundries install these units for environmental benefits.

Mickey Jencius stated that EPA used to focus on large emission sources. Now due to Environmental Justice concerns, EPA is focusing more on smaller sources with air toxics in urban settings. She also said that Region V is a leader in enforcement and a focus on Environmental Justice.

### **Subpart UUU Is Not Needed Because Foundries Are Already Controlled**

Jeff Hannapel stated that regulation of thermal sand reclamation units at foundries under Subpart UUU is not necessary because sand systems in foundries are already controlled and regulated for air emissions. Foundries are subject to opacity limits and fugitive emission controls in state and federal regulations.

Jeff Hannapel also noted a recent example of where an EPA regulation was unintentional applied to thermal sand reclamation units at foundries. Specifically, EPA concluded that processing sand in thermal reclamation units was burning for discard, thereby triggering the CISWI regulation. EPA never intended to regulate thermal sand reclamation units as incinerators and had no data to support any incinerator limits for these units. AFS commented on this interpretation and EPA's erroneous application of incinerator standards to thermal sand reclamation units. EPA agreed and went out of its way to exclude the units from regulation as a CISWI unit by concluding that these units were "parts reclaimers" and referring to the sand as a tool. AFS contends similarly that EPA never intended to subject foundries to Subpart UUU and had no data to support the inclusion of foundries in Subpart UUU. It was only a subsequent interpretation that triggered an unintended consequence of applying the requirements of Subpart UUU to foundries that EPA has yet to correct, but should.

Finally, Dan Oman noted that the BID for Subpart UUU mentioned foundries only once and that reference was to a "user of sand" that was processed by the mineral industries and not as a processor to be regulated under Subpart UUU. In addition, the enabling documents for the Subpart UUU rulemaking, which are intended for permit writers on how to enforce this rule, never mention foundries as a source category to be regulated by Subpart UUU.

### **11-Ton Exemption from Opacity Monitoring Requirements**

Region V has decided that Subpart UUU applies to sand reclamation units and is taking enforcement. Current ADIs also state that the rule applies to units at foundries that process industrial sand in calciners and dryers. Region V has also informed its states that Subpart UUU applies and it needs to be included in Title V permits at renewal.

Accordingly, these units are subject to the opacity monitoring requirements of Subpart UUU. EPA has issued several ADIs that clearly state that units subject to Subpart UUU that have emissions of less than 11 tons are not required to monitor emissions. EPA made it clear that it is not necessary for facilities to seek this exemption on a case by case basis.

In general, EPA agreed that industry wants to comply with the rules. The rule states that units subject to Subpart UUU must have COMS. According to Kevin Vilaneer even if emissions from regulated units are low (e.g. 1-2 TPY) the rule requires opacity monitoring. Under the general NSPS provisions, facilities can use alternative monitoring systems if they specifically request it from EPA. Alternative monitoring can include qualitative visible monitoring or Method 22. Any alternative monitoring must be approved in a case by case determination, not a blanket exemption.

Region V believes that the existing ADIs are incorrect because they were based on preamble language and not the rule language. Therefore, Region V believes the ADIs are invalid. Region V inferred that EPA HQ agrees with this position. In addition, Region V also stated that its

enforcement decisions on Subpart UUU were made in sync with HQ so there is no disagreement within the agency.

Craig Schmeisser noted that during the meeting when discussing monitoring alternatives, Region V stated that many of the permits already have alternative monitoring means included for ascertaining opacity. EPA was referring to the qualitative readings that are in just about all construction and Title V permits in Region V states (as well as outside Region V). While it may be true that some foundries will have been doing these qualitative opacity readings, the readings may or may not be daily and in most cases Method 22 is not listed as the applicable method because Method 22 criteria would probably not have been met. Accordingly, the alternative monitoring for opacity that foundries may already be performing may not be sufficient to meet the requirements of Subpart UUU.

### **Enforcement Initiative Within Region V**

Mickey Jencius indicated that in order to close out an enforcement settlement with a source, EPA has to address UUU compliance at that facility. Therefore, while EPA doesn't go out looking for UUU non-compliance, they will include it in an NOV and may include it in settlement agreements.

Bryant Esch and Jeet Radia suggested that many foundry processes within the sand system may meet the definition of a dryer or calciner, particularly where at least some water may be driven off. Applying this interpretation to these other processes and units would be opening up more foundry equipment for Subpart UUU regulation that was never intended. Mickey Jencius asked if any Subpart UUU enforcement action has been brought against foundries for these additional units. AFS responded that we were not aware of any such enforcement actions, but our discussions with EPA officials and state officials had included any unit that processed industrial sand and meet the definition of calciner or dryer where at least one molecule of water was evaporated would be covered by Subpart UUU. In addition, the concern is about future interpretations from others who are not present at today's meeting may lead to other foundry sand system equipment. Mickey Jencius stated that EPA Region V has no intent to pursue equipment or processes at foundries more broadly for Subpart UUU compliance.

### **Closing Remarks from EPA**

1. AFS desires a rule change to explicitly state foundries are exempt. This action must be done through OAQPS. Region V will discuss AFS's position with OAQPS. Jeff Hannapel clarified that AFS believes that Subpart UUU does not apply to foundries, so the past applicability determinations need to be corrected. If they are not corrected then, AFS would pursue a rule change to clarify that Subpart UUU does not apply to foundries.

2. Region V believes UUU applies to foundries and they have told Region V states. Accordingly, Region V believes that we will see more uniform application of Subpart UUU to foundries going forward.

3. With respect to the 11 ton exemption from monitoring requirements, EPA noted that the existing ADIs and rule language contradict each other. Region V noted that it has not responded to any ADI on this topic nor has it publicly added anything to that issue or ADIs. Region V believes that Subpart UUU requires monitoring of PM emissions for all units subject to the rule (although it would allow alternative monitoring programs for units with emissions of less the 11 tons on a case-by-case basis) and will not discuss that issue any further or give AFS and its members any direction.

4. Mickey Jencius and Brian Dickens confirmed that EPA has not yet assessed any penalties for Subpart UUU violations at the foundries that have been cited by Region V as of the date of our meeting.