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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 23, 2008

Honorable Joseph Powers, Acting Chairperson  
Environmental Quality Board  
Rachel Carson State Office Building  
400 Market Street, 16th Floor  
Harrisburg, PA 17101

Re: Regulation #7-420 (IRRC #2683)  
Environmental Quality Board  
Control of NOx Emissions from Glass Melting Furnaces

Dear Acting Chairperson Powers:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman  
Executive Director  
wbg  
Enclosure

cc: Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy  
Committee  
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and  
Energy Committee  
Honorable Camille George, Majority Chairman, House Environmental Resources and Energy  
Committee  
Honorable Scott E. Hutchinson, Minority Chairman, House Environmental Resources and  
Energy Committee

# Comments of the Independent Regulatory Review Commission



## Environmental Quality Board #7-420 (IRRC #2683)

### Control of NO<sub>x</sub> Emissions from Glass Melting Furnaces

July 23, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the April 19, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (Board) to respond to all comments received from us or any other source.

**1. General - Statutory authority; Fiscal impact; Reasonableness; Implementation procedure; Consistency with other regulations; Clarity.**

On July 11, 2008, the U.S. Court of Appeals for the D.C. Circuit vacated CAIR and its associated federal implementation plan. In ruling that the complete CAIR must fail rather than just merely its more problematic components (such as the regional cap and trade system for power plant emissions), the Court in State of North Carolina v. EPA, et al. ruled that the analysis of the U.S. Environmental Protection Agency (EPA) was “fundamentally flawed” and that the federal agency must start its analysis anew. Consequently, what is the Board’s statutory authority for the use of CAIR NO<sub>x</sub> allowances and revised (nitrogen oxides) NO<sub>x</sub> emission limits in this proposed regulation?

In their letter dated July 18, 2008, Senators Mary Jo White and Raphael J. Musto, Majority and Minority Chairmen of the Senate Environmental Resources and Energy Committee (Senate Committee Chairmen) jointly expressed similar concerns. They questioned “the ability of the Board to move forward with these regulations...” and they noted that the Court found the state NO<sub>x</sub> budgets as determined by the EPA were “arbitrary and capricious.”

We urge the Board to address the concerns of the Senate Committee Chairmen, and if substantial changes to this regulation are necessary due to the Court case, then the Board should consider submitting an Advanced Notice of the Final Rulemaking or publishing the changes as a new proposed regulation in the *Pennsylvania Bulletin*.

If the Board determines it has the statutory authority to use CAIR allowances and emission limits, serious questions remain for both the Board and the industry. Commentators expressed concerns over the industry's ability to meet the 2009 deadline imposed by the proposed regulation. Some segments of the industry may be able to use the allowances system set forth in Section 129.309(c). One commentator recommended the use of a variance. There are three concerns.

First, Section 129.304 uses the 2009 deadline set in the EPA's CAIR for reducing NOx emissions. Given the uncertainty of the future of CAIR, the Board should review the practicality of the 2009 deadline in this proposed regulation. If the Board determines that NOx emission reductions can be implemented effectively despite the recent federal court decision, it should consider phasing in reductions in NOx emissions via a series of deadlines that will protect public health while also giving the industry adequate time to adapt to the changes without placing it at a competitive disadvantage.

Second, Section 129.309(c) references the allowance program under CAIR. It is now unclear whether these allowances will be available. In the Preamble, the allowance program is described as part of the flexibility that will assist glass furnace owners and operators in demonstrating compliance with this regulation. Given the uncertainty with the CAIR allowance program, what other options will be available for providing flexibility to the industry in achieving compliance?

Third, our neighboring states in the Ozone Transport Commission (OTC) have not yet finalized their rules for the glass industry. Therefore, we question whether imposing the proposed emission requirements in the absence of a federal deadline will place Pennsylvania industry at a competitive disadvantage. The Board should carefully review the situation in conjunction with the OTC and take precautions to insure a level playing field in the industry.

On a related issue, the Preamble states that the Department of Environmental Protection (Department) plans to assist the regulated community in understanding the proposed regulation and references its ongoing "Regional Compliance Assistance Program." This term is not mentioned in the text of the proposed regulation and does not appear in the Department's existing regulations. Section 127.701 in the existing provisions refers to the "Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and the Office of Small Business Ombudsman." Would these programs be available to the glass industry? Where can the regulated community get more information about the "Regional Compliance Assistance Program"?

**2. Section 121.1. Definitions. - Reasonableness; Implementation procedure; Consistency with other regulations; Need; Clarity.**

*100% Air-fuel fired, Air-fuel firing, Oxyfuel fired and Oxygen-assisted combustion*

The proposed regulation adds four new definitions for the terms “100% Air-fuel fired,” “Air-fuel firing,” “Oxyfuel fired” and “Oxygen-assisted combustion.” However, these terms do not appear elsewhere in Chapters 121 and 129 or the proposed regulation. The Board needs to explain the need for these four definitions or delete them from the final-form regulation.

*Complete reconstruction and Furnace rebuild*

The term “complete reconstruction” only appears in the definition of “furnace rebuild” and nowhere else in the proposed regulation. The definition of “complete reconstruction” should be added as a subpart of the definition of “furnace rebuild.” This would add immediate and direct clarity to the definition of “furnace rebuild” rather than expecting readers to search elsewhere for clarification of the term “complete reconstruction.”

*Multiple furnaces*

This term is not used elsewhere in the proposed regulation. The phrase “multiple glass melting furnaces” is used in at least six different places in the proposed regulation. If the definition for “multiple furnaces” is intended to apply to the term “multiple glass melting furnaces,” then the title of the definition needs to be changed in the final-form regulation to reflect the actual term used repeatedly in the regulation.

*Pull rate*

The term “pull rate” only appears twice in the proposed regulation. Once is in the title of this definition, and the other is in the definition of “permitted production capacity.” The definition of “pull rate” should be included in the definition of “permitted production capacity” in the final-form regulation.

*Shutdown and Start-up*

Both these definitions include the phrase “for the purposes of § 129.303” and one also includes the parenthetical phrase “(relating to exemptions)” as an additional part of the phrase. However, both terms appear in other sections of the proposed regulation, which are referenced in Section 129.303. It is unclear why the phrase “for the purposes of § 129.303” is necessary. If the terms “shutdown” and “start-up” have the same definitions in the other sections of the proposed regulation, then the phrase “for the purposes of § 129.303” should be deleted from the proposed regulation. If the two terms have different

meanings in different provisions, the Board needs to explain the differences and use different terms.

**3. Section 129.303. Exemptions. - Implementation procedure; Reasonableness; Clarity.**

Subsection (c) establishes procedures for an owner or operator to file a notice claiming an exemption with the Department. The purpose of the notice is unclear. While this section does not indicate whether Department approval of the exemption is necessary, Section 129.305(c) refers to submitting a request with the Department for a “start-up exemption.” If Department approval is required, there is no indication of the process that the Department will use to determine approval, or how and when it will notify the owner or operator that an exemption has been granted. The final-form regulation needs to specify whether Department approvals of exemptions are necessary. If they are, the final-form regulation should also identify the process and timetable for the Department’s determination.

Requirements for recordkeeping are addressed in Subsection (d). Owners and operators must maintain records for five years and make them available to the Department “upon request.” It is unclear whether the Department’s requests will be in writing. They should be, and the final-form regulation should specify that the Department will make these requests in writing.

This concern also applies to requests for information by the Department that are described in Sections 129.305(a) and 129.310(c). The final-form regulation should specify that the Department will make these requests in writing.

**4. Section 129.304. Emission requirements. - Fiscal impact; Implementation procedure; Reasonableness; Feasibility.**

Pittsburgh Corning Corporation (PCC) stated that the Board failed to provide technical support for the allowable nitrogen oxide (NO<sub>x</sub>) emissions set forth in Subsection (b). The PCC declared that the allowable emission rates are “arbitrary and do not reflect actual operating conditions” and described the required emission limits as “overly burdensome.” When the Board submits the final-form regulation, it should provide a detailed explanation of the basis for the emission levels set forth in Subsection (b).

**5. Section 129.308. Compliance determination. - Fiscal impact; Implementation procedure; Reasonableness; Clarity.**

By May 1, 2009, Subsection (a) requires that owners or operators of glass furnaces install continuous emissions monitoring systems. It also allows an owner or operator to use “an alternate NO<sub>x</sub> emissions monitoring system or method, approved in writing by the Department.” However, there is no indication of how an owner or operator would apply for approval of an alternate

system or method. There is also no indication of the criteria, process or timetable that the Department will utilize in making a decision. This information should be set forth in the final-form regulation.

**6. Section 129.309. Compliance demonstration. - Clarity.**

In their comments, the Senate Committee Chairmen expressed concerns related to “emissions averaging” in Subsection (b)(3). They questioned the prohibition on trading or averaging NOx emissions or allowances between facilities under different corporate ownership. They “favor removing the requirement for being ‘under common control of the same owner or operator in this Commonwealth’...” from this subsection. The Board needs to justify its “under common control of the same owner or operator” rule or delete it.

In particular, we question the purpose of the phrase “in this Commonwealth” in Subsection (b)(3). Does this phrase mean that the owner or operator must be located in this Commonwealth? Why is it necessary? What happens in situations when the facilities are located in Pennsylvania but the owner is not?

Subsection (c)(1) includes the term “CAIR NOx Ozone Season allowance” and refers to an existing provision in Section 145.202. However, a term including the word “allowance” does not appear in Section 145.202. The term “CAIR NOx Ozone Season allowance” does appear in Sections 145.211 and 145.212 and elsewhere in Chapter 145. It is also defined in federal regulations at 40 CFR §§ 96.102 and 96.302. The final-form regulation should be revised to include a correct reference for this term.

# Facsimile Cover Sheet



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
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**To:** Debra L. Failor  
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**Date:** July 23, 2008  
**Pages:** 7

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REVIEW COMMISSION

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-420 (IRRC #2683). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:  Date: 7-23-08