

ADVANCED NOTICE OF FINAL RULMAKING
#2683
EQB #7-420
CONTROL OF NO_x EMISSIONS FROM GLASS
MELTING FURNACES

2683

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VIA EMAIL AND U.S. FIRST CLASS MAIL

Jane Mahinske
Division of Air Resources Management
Bureau of Air Quality
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Re: Comments on Proposed Rulemaking – “Control of NOx Emissions from Glass Melting Furnaces”

Dear Ms. Mahinske:

We represent Pittsburgh Corning Corporation (“PCC”) which has a glass melting facility in Port Allegany, Pennsylvania. The following comments to the draft final-form rulemaking regarding “Control of NOx Emissions from Glass Melting Furnaces”, published in the September 12, 2009 Pa. Bulletin, are submitted on behalf of PCC. This draft final-form rulemaking proposed numerous changes to the proposed regulations which were published in the April 19, 2008 Pennsylvania Bulletin. Comments on that proposed rulemaking were previously submitted by PCC in a letter to the Environmental Quality Board dated June 23, 2008, which is attached and incorporated by reference.¹ PCC’s comments are organized into General Comments, followed by comments on specific sections of the proposed regulations.

I. General Comments

A. The final-form rulemaking fails to comply with Executive Order 1996-1

Executive Order 1996-1 provides, in pertinent part, as follows:

1. General Requirements. In the drafting and promulgating of new regulations and the application and review of existing regulations, all agencies shall adhere to the following principles:

- a. Regulations shall address a compelling public interest.

¹ The Department has never prepared a comment response document to address the comments that were received on the proposed rulemaking published in the April 19, 2008 Pa Bulletin (38 Pa B 1831)

b. Costs of regulations shall not outweigh their benefits.

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d. Regulations shall address definable public health, safety or environmental risks.

e. Where federal regulations exist, Pennsylvania's regulations shall not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law.

* * * *

i. Regulations shall not hamper Pennsylvania's ability to compete effectively with other states.

The final-form rulemaking preamble and the April 2008 draft rulemaking do not address whether the costs of the proposed regulation of NOx emissions from glass melting furnaces exceed its benefits. In neither rulemaking proposals does the EQB quantify the possible benefits of the proposed rulemaking nor address the costs. To effectively engage in a cost/benefit analysis, the benefits of the regulation - presumably an improvement in air quality - must be quantified and the costs for industry to achieve compliance with the regulations must also be established. Even had there been such an analysis in 2008, the economic deterioration and recessionary trends which have continued since the promulgation of the draft rulemaking proposal would require an update. It is critical to Pennsylvania glass melting operators that the EQB assure itself and the public that these regulations are necessary and cost effective. Because the EQB has failed to quantify the benefits and sufficiently consider the approximate costs of compliance, the proposed rulemaking does not support a conclusion that its costs will not exceed the benefits. To be consistent with Executive Order 1996-1, a cost benefit analysis must be provided.

Executive Order 1996-1 also requires that where federal standards exist, state regulations be no more stringent. In the preamble to the draft final rulemaking the EQB indicated that the NOx surrender compliance option was eliminated from the 2008 draft proposal because the EPA had advised the Department that the NOx Clean Air Interstate Rule ("CAIR") was not applicable to glass melting furnaces. EPA has recently published a proposed rule in the September 24, 2009 Federal Register (Volume 74, page 48696 et seq.) which proposes to approve a revision to the Pennsylvania State Implementation Plan to address the requirements of the CAIR and to provide for additional control of sulfur dioxide and nitrogen oxide emissions. The CAIR Rule is specifically directed to reducing NOx emissions and, to accomplish this goal, focuses on the regulation of electric generating units. As the EQB acknowledges in the September 12, 2009 Pennsylvania Bulletin, the EPA has advised Pennsylvania that CAIR does not apply to glass melting furnaces. Therefore, it appears that the draft final-form rulemaking imposes requirements on glass melting furnaces that are more stringent than federal standards. The only justification comes in the form of a general statement in the preamble that provides:

To the extent that this regulation is more stringent than any corresponding federal requirements, it is reasonably necessary to achieve and maintain the health-based 8-hour ozone and the fine particulate NAAQS.

This conclusory statement does not satisfy the requirements of Executive Order 1996-1.

B. The final-form rulemaking violates Section 4.2 of the Pennsylvania Air Pollution Control Act (APCA)

Section 4.2 of the APCA restricts the Board from adopting by regulation:

. . . only those control measures or other requirements which are reasonably required, in accordance with the Clean Air Act deadlines, to achieve and maintain the ambient air quality standards or to satisfy related Clean Air Act requirements, unless otherwise specifically authorized or required by this Act or specifically required by the Clean Air Act.

- (b) Control measures or other requirements adopted under subsection (a) of this section shall be no more stringent than those required by the Clean Air Act unless authorized or required by this Act or specifically required by the Clean Air Act.

In the preamble to the final-form rulemaking, the Board specifically ties the NOx emissions limits for glass melting furnaces to achieving and maintaining the health-based 8-hour ozone NAAQS. To the extent that NOx emissions from glass melting furnaces are not currently regulated by EPA, this rulemaking is prohibited by Section 4.2 of the APCA, since it is a regulation which is intended to achieve and maintain federal air quality standards but is more stringent than required by the Clean Air Act. Unless the EQB provides more justification demonstrating how these regulations are required by the APCA or Clean Air Act, the EQB is prohibited from adopting them.

II. Specific Comments

A. Section 129.304(a)

There is no basis for the Board's proposed NOx emission limits. In the April 2008 draft rulemaking, the Board justified these NOx emissions limitations by noting that the Department met with representatives of the glass industry and reached a general agreement with respect to these emission limitations. PCC was neither notified nor consulted on this matter. Second, the 2008 draft rulemaking indicated that the emission limits were modeled after the regulatory limits set for the glass manufacturing industry in the San Joaquin Valley in California, but were fashioned to be Pennsylvania specific. There is no discussion in either the April 2008 rulemaking or the September 2009 final-form rulemaking as to how the San Joaquin Valley regulation was modified or "fashioned" to be Pennsylvania specific. This failure of the Board to explain why California emission limitations are appropriate in Pennsylvania constitutes an arbitrary and capricious action.

In its comments on the April 2008 draft regulations, PCC stated:

"The arbitrary nature of the emission limitations is also evidenced by reference to the July 26, 2007 draft minutes of the Air Quality Technical Advisory Committee meeting. In this meeting, it was reported that the "NOx emission limitations for flat GMF and pressed and blown GMF was changed from 9.2 lbs/ton of glass pulled (24-hour block averages) to 7.0

lbs/ton of glass pulled.” The minutes state that this change was made in order to “make the regulation consistent with the cement regulation. Although the 9.2 lbs/ton was changed to 7.0 lbs/ton to make the two regulations consistent, nothing is set forth in the rulemaking materials to indicate that the operations, nature of emissions, and ability to control of cement facilities are analogous to that of the glass manufacturing facilities...”

Nowhere in either the April 2008 rulemaking or the preamble to the draft final form rulemaking does the EQB address this issue. Before imposing emission limitations that will require glass melting operations to install emission controls at significant cost in a seriously weakened economy, the Board must demonstrate the basis for its determination that the emission levels are necessary or appropriate.

Section 129.304(a) also applies year-round, whereas the previous rulemaking provided only for seasonal NOx emissions limitations. The only reference to this change in the September 2009 preamble is the statement by the Board that:

. . . the draft final-form rulemaking requires compliance with the NOx emission limits year-round because NOx is a precursor to both the 8-hour ozone and fine particulate national ambient air quality standards. In addition, it is anticipated that EPA will extend the ozone season in this Commonwealth from March 1 to October 31, each year.

This statement is a clear admission by the EQB that this regulation, at least to the extent that it proposes to apply NOx emission limits year-round exceeds applicable federal standards. There is no explanation justifying the Board’s action in promulgating a more stringent standard for Pennsylvania.

B. Section 129.304(b)

The final-form regulations provide for an absolute compliance date of January 1, 2011, unless petitions are submitted in accordance with subsection (c). PCC suggests that the compliance date should be expressed as a specific number of calendar months from the date on which the NOx regulations are published as final rulemaking and become effective. Given the uncertainties of the public comment period and the review of these draft regulations by the EQB, the Independent Regulatory Review Commission and the Attorney General, these regulations may undergo additional revisions prior to becoming final. Establishing a “floating” compliance date to be calculated once the regulations become final, assuming that occurs, is the most appropriate way to establish a compliance date which has a reasonable prospect of being achieved.

C. Section 129.304(c)

While PCC applauds the decision to provide for extensions of the compliance date, PCC has the following concerns with this provision:

- This Section does not provide any objective criteria for the Department’s approval of an alternative compliance schedule. This leaves a regulated operator without any basis for determining the likelihood that it could

obtain a compliance schedule extension or for challenging the Department's denial.

- This Section fails to provide all glass melting furnace operators with an opportunity to petition for an alternative emission limitation. Section 129.304(c)(1) only provides the option of petitioning for an alternative emission limitation to those operators who operate "other glass melting furnaces". Neither the Department nor the Board has provided an explanation for why this option was not provided to other glass melting furnace operators.
- The Board should clarify the status of furnace operators who submit a compliance schedule extension petition. Section 129.304(c)(3) requires an owner or an operator of a glass melting furnace to submit a petition for an alternative emission limitation or compliance schedule by January 1, 2011. That date is currently the compliance deadline for NOx emission compliance. If an operator submits a petition on December 31, 2010, it is unclear whether the operator will be considered to be in at least a status of "administrative compliance" because of the filing of the petition or whether the operator will be expected to demonstrate compliance with the NOx emission limitation until such time as the Department favorably acts on the petition. It is important for operators to understand what their compliance status is during the Department's consideration of any petition for an extension of the compliance deadline or alternative emission limitation. Given the fact that there is no criteria for the Department to apply in making its decision on these petitions and the fact that there is no deadline by which the Department must act on a petition, the opportunity which this petition process appears to offer could be illusory if there is no protection afforded to operators during the period of the Department's consideration of the petition.
- The requirement to submit interim milestone dates could prove problematic for furnace operators who elect to implement compliance measures after furnaces are shut down for rebuild or rebricking. Section 129.304(c)(4)(ix) requires petitioners for alternate compliance schedules to submit a proposed schedule containing interim milestone dates for completing "any phase of the required work." It is unclear whether the failure to submit such milestone dates would be a basis for the Department's denial of the petition. In PCC's case, add-on control installation would only occur during the next scheduled rebuild/rebricking of the furnace and there are only minimal – if any – interim measures that could be taken beyond what PCC currently provides.

D. Section 129.307

The idling emission limitation calculation does not account for the situation in which a glass melting furnace operator has obtained an interim or alternative emission limitation. The reference to the applicable NOx emission limit specified in 129.304(a) precludes a glass melting furnace operator who has obtained an interim or alternative emission limit from using that approved limit in the calculation.

E. Section 129.308

Section 129.308(a) requires the installation, operation and maintenance of a continuous emission monitoring system "no later than 14 days prior to the applicable compliance date under Section 129.304(b)." Section 129.304(b) requires compliance by January 1, 2011 "unless a petition for alternate emission limitation or compliance schedule is approved by the Department . . ." It is unclear whether an operator who has submitted a petition for a compliance schedule extension on or before January 1, 2011 and who has not received a determination from the Department on that petition is required to have a CEMS installed and operating by no later than December 18, 2010. It would make little sense for an operator who files a petition for a compliance deadline extension to install a CEMS prior to the date 14 days before the end of any compliance schedule extension. It appears that the intent of this provision is to defer installation of CEMS until such date, but it is not clear from the use of the word "unless" in Section 129.304(b) whether an operator who timely submits a petition but who does not receive a response from the Department would be required to otherwise install and operate a CEMS. Clearly, installation of a CEMS during a period when the operator was acknowledged not to be in compliance would not generate any meaningful data on compliance.

Section 129.308(b) requires that data invalidated under Chapter 139, Subchapter C shall be:

... substituted with data calculated using the potential emission rate for the furnace or if approved in writing by the Department as follows:

"(1) highest valid one-hour emission value that occurred during the reporting quarter-hour.

(2) if no valid data were collected during the reporting quarter, the most recent quarter for which valid data were collected shall be reported to the Department unless an alternative reporting period is approved by the Department in writing."

The Department's regulation with regard to emission accountability for sources other than glass melting furnaces provides that:

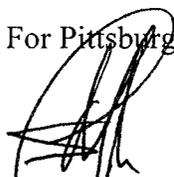
Any data invalidated under Chapter 139 (relating to sampling and testing) shall be substituted with data calculated using the potential emission rate for the unit or, if approved by the Department in writing, an alternative amount of emissions that is more representative of actual emissions that occurred during the period of invalid data. (emphasis added) (see, e.g., 129.204 (standards for sources, emission accountability), 145.113 (emission of NOx from internal combustion engines), 145.143 (emission of NOx from cement manufacturing)).

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Limiting the alternatives for the substitution of invalid data to the two approaches in the proposed regulation is not only inconsistent with other DEP regulations, but also prohibits glass melting furnaces from using alternative emission calculations which may be more representative of actual emissions. The Department's most recent CEMS manual addresses missing data substitution procedures and while specifically adopting the alternative approaches in Section 129.308(b), also allows for the approval of other alternative emission calculations (DEP Continuous Source Monitoring Manual, Rev. No 8. page 49-51). Proposed Section 129.308(b) does not give glass melting furnaces that leeway. The regulation of glass melting furnaces with regard to data determined to be invalid under Chapter 139, Subchapter C should be at least as flexible as similar regulations for other sources and the CEMS manual.

PCC appreciates the opportunity to submit these comments.

For Pittsburgh Corning Corporation



By Reed Smith LLP
Louis A. Naugle

LAN/dja

Enclosure

cc: Independent Regulatory Review Commission
Honorable Tom Corbett, Attorney General
Honorable Mary Jo White
Honorable Camille Bud George
Honorable Joseph B. Scarnati, III
Honorable Martin T. Clauser