

**PGW**

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**PITTSBURGH GLASS WORKS**

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**Joseph D. Stas**  
Executive Vice President and COO

December 15, 2009

Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Re: Advanced Notice of Final Rulemaking  
#2683/EQB#7-420  
Control of NOx Emissions from Glass Melting Furnaces

Dear Commissioners:

Pittsburgh Glass Works, LLC ("PGW") submits the following comments regarding the proposed final rule entitled Control of NOx Emissions from Glass Melting Furnaces [25 Pa. Code, Chapters 121 and 129] published in the Pennsylvania Bulletin on November 6, 2009. Questions or responses related to these comments should be directed to Ted Huyett, Pittsburgh Glass Works, LLC, 10800 South 13<sup>th</sup> Street, Oak Creek, Wisconsin 53154, or returned via e-mail at [thuyett@pgwglass.com](mailto:thuyett@pgwglass.com).

PGW owns and operates two flat glass melting furnaces in Meadville, Pa. for the production of glass for the automotive industry. This facility was formerly owned and operated by PPG Industries, Inc. ("PPG"). On September 30, 2008, PGW acquired PPG's automotive glass and services businesses. That acquisition included the Meadville facility. That facility operates under Title V Permit No. 20-00145. Each flat glass melting furnace operates continuously, 24-hours per day, 365 days per year. Each furnace operates for approximately 10 to 15 years before a shutdown is required for re-bricking due to normal deterioration and wear of the refractory brick. Furnace 8-1 last underwent re-bricking in 2002 and was voluntarily converted to oxy-fuel. Furnace 8-2 began re-bricking earlier this year and is a standard air fired furnace. With approval from the Department of Environmental Protection ("Department"), PGW installed low NOx burners on furnace 8-2 during the 2009 re-bricking. Furnace 8-2 was recently restarted.

PGW has submitted comments to the Department on the prior drafts of the proposed Rule, and PGW appreciates the fact that the Department has made some revisions to the proposed Rule that appear to be responsive to some of the comments submitted by PGW and others.

**Comments**

PGW understands that the IRRRC focuses its review of proposed Rules, *inter alia*, on the statutory authority for the Rule, its consistency with the legislative intent, economic impacts within the Commonwealth, impacts on prices and competition, and clarity and reasonableness of the proposed regulation.

PGW's comments address statutory authority, legislative intent, economic impacts in the Commonwealth, impacts on competition, and clarity of the proposed regulation.

## **1. Background**

When first proposed in 2007, the Rule was structured to establish NOx emission standards for glass melting furnaces to apply "during the ozone season," not for all 12 months of the year. The Department also projected that the proposed Rule will assure that the Commonwealth will continue to experience improved ozone, fine particulate and visibility benefits. The overall strategy is to reduce ozone transport so as to achieve and maintain the health-based 8-hour ozone national ambient air quality standard ("NAAQS").

On September 18, 2008, the Department provided a summary of the comments received on the initial draft Rule. The summary did not include any responses to the listed comments.

In the September 12, 2009 publication of the revised proposed Rule, the same objectives were noted. However, the Department also noted that the revised proposed Rule would require compliance with the emission limits for the entire 12 months of the year and that the Rule "is more stringent than any corresponding Federal requirements," claiming that those more stringent standards are reasonably necessary to achieve and maintain the 8-hour ozone NAAQS. No supporting data or information was provided to substantiate that claim.

On November 6, 2009, the draft final Rule was made available, and it was listed as an agenda item for the November 18, 2009 Air Quality Technical Advisory Committee meeting. The AQTAC recommended that the rulemaking move forward. We have been advised that the final form of the proposed Rule will be presented for approval to the Environmental Quality Board at its February 16, 2010 meeting.

## **2. The Final Form Regulation Does not Comply with Executive Order 1996-1 and is not Supported by Pennsylvania Law**

Executive Order 1996-1 applies to all Pennsylvania agencies, including the Department, when drafting and promulgating new Rules. Where, as here, Federal regulations exist, ¶ 1.e. provides that "Pennsylvania's regulation shall not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law." Moreover, "Regulations shall not hamper Pennsylvania's ability to compete effectively with other States." ¶ 1.e. Finally, the cost to comply with regulations "shall not" outweigh their benefits. ¶ 1.b.

Section 4.2(a) of the Pennsylvania Air Pollution Control Act ("APCA"), 25 P.S. § 4004.2(a), provides that the EQB may adopt, by regulation, "only those control measures which are reasonably required...to achieve and maintain the ambient air quality standards or to satisfy related Clean Air Act requirements." Such control measures "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." § 4.2(b). The EQB may not, by regulation, adopt an ambient air quality standard for a specific pollutant which is more stringent than the air quality standard which EPA has adopted for that pollutant. § 4.2(c).

The record developed for this proposed Rule demonstrates that the proposed NOx limits for glass melting furnaces, applicable throughout the entire calendar year, by the Department's own admission, are more stringent than any corresponding Federal requirements, but the record contains no cost/benefit analysis, and the record does not identify any compelling and articulated Pennsylvania interest that justifies the more stringent requirements.

As part of its comments on the proposed Rule, PPG has submitted detailed air modeling, using the Department's data, to assess the impact of the NOx emissions from PGW's Meadville and PPG's Carlisle glass melting furnaces. The modeling results indicate that existing NOx emissions from those two facilities **do not** contribute to any ozone non-attainment. The Department has simply chosen to ignore those modeling results. Thus, PGW respectfully submits that the proposed final Rule, in its current form, is lacking in statutory authority and is inconsistent with the clearly expressed legislative intent.

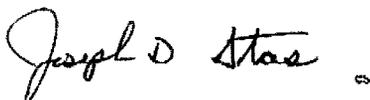
Moreover, the more stringent standards, if adopted, will ultimately require furnace operators like PGW to spend \$9 to \$10 million to install additional emission controls to achieve a very minimal emission reduction, and then to incur the substantial additional annual operating expenses associated therewith to meet the proposed more stringent requirements while competitors in other States, not subject to the same more stringent standards, are not required to do so. That will make Pennsylvania's glass melting furnaces non-competitive with the result that a number of such facilities may be shutdown, costing Pennsylvania and its political subdivisions jobs and tax revenues. That is the very result that Executive Order 1996-1 was intended to prevent.

### **3. The Alternate Compliance Date Petition Process Lacks Clarity**

Section 129.304(b) of the proposed Rule provides that an owner or operator of a glass melting furnace not in compliance with the proposed emission limit by May 1, 2011, may petition for an emission compliance schedule provided any such petition is submitted by May 1, 2011. The proposed regulation does not specify whether the owner/operator of a glass melting furnace who submits a timely petition is entitled to continue operating the glass melting furnace in accordance with its then current permit limits until the Department makes a determination on the petition. The proposed regulation does not address, with any specificity, the criteria that will be used by the Department to determine whether to grant or deny such a petition. Thus, an owner/operator can submit a petition in good faith without any ability to make a reasoned judgment as to whether the petition will be approved or denied, and the owner/operator's status after May 1, 2011 is undefined and unknown. Such uncertainty makes business planning extremely difficult if not impossible. Moreover, in the absence of objective criteria, standards or benchmarks, the petition review and decision-making process is subject to possible arbitrary actions, inconsistencies, and delays. Finally, if a petition for an emission compliance schedule is denied or is granted with conditions that the petitioner finds objectionable, the Rule does not specify whether the furnace can continue operating while the owner/operator pursues any and all appeal rights.

Thus, PGW respectfully submits that the proposed regulation lacks clarity and reasonableness.

Sincerely,



Joseph D. Stas  
Executive Vice President and COO