

**BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

**DOCKET ID No. EPA-HQ-OAR-2008-0508**

**MANDATORY REPORTING OF GREENHOUSE GASES**

**COMMENTS OF THE GLASS ASSOCIATION OF NORTH AMERICA**

The Glass Association of North America ("GANA") submits these comments in response to the *Federal Register* notice, dated April 10, 2009, 74 *Fed. Reg.* 16448, soliciting public comments on the proposed regulations of the U.S. Environmental Protection Agency ("EPA") to require annual reporting of greenhouse gas ("GHG") emissions.

Founded in 1994, GANA is the leading commercial glass and glazing industry trade association in North America. With 340 member companies in the United States and worldwide, GANA represents nearly 100 percent of North American flat glass manufacturing capacity. Six of its member companies are engaged in "glass production" (NAICS 327211) in the United States, a proposed regulated category listed in Table 1 of the preamble of the Notice of Proposed Rulemaking ("NPRM"). They produce flat glass in furnaces, combusting primarily natural gas in the manufacturing process. These GANA members operate 39 flat glass producing furnaces at locations across the country, including three facilities in California. Each of these facilities currently meets the proposed applicable reporting threshold, 25,000 metric tons of CO<sub>2e</sub> per year of actual emissions, set forth in 49 CFR Part 98 (§ 98.2), Subpart N (§ 98.141).

Generally, GANA agrees with and supports EPA's proposal in 40 CFR Part 98, Subpart N, prescribing the methodology for measuring, monitoring, and reporting GHG emissions from the glass melting process. GANA also agrees with most of the proposed general design elements for collecting and reporting GHG emissions data as summarized in the preamble, but respectfully requests revisions, as more fully discussed below, to certain proposed design elements of the general and specific-category reporting requirements.

**I. Comments on the General Requirements of the Proposed Rule.**

**A. Lingering Uncertainties Warrant A 2011 Start Date.**

EPA proposes that emissions reporters begin collecting GHG emissions data starting January 1, 2010 and submit their emissions reports for 2010 emissions on or before March 31, 2011. GANA believes the proposed start date is, under the circumstances, too ambitious and too speculative. It would, in turn, require glass manufacturers to undertake potentially very expensive collection and reporting adjustments if their speculation as to the precise shape and form of the final mandatory reporting rule turns out to be inaccurate. Instead, GANA respectfully requests EPA to designate 2011 as the first emissions-reporting year with emissions monitoring to begin January 1, 2011. This roll-out date allows EPA adequate time to carefully evaluate all public comments received in response to its NPRM and craft a revised final rule, responsive to those comments, and it also allows industry sufficient time to make all adjustments necessary in its GHG emissions collection-and-reporting systems to conform to the revised final reporting rule when issued.

EPA candidly admits it may be unable to issue the final rule in sufficient time for industry sources to begin GHG emissions monitoring and collection on January 1, 2010. *See 74 Fed. Reg.* at 16471. That uncertainty alone is sufficient reason to push the monitoring-year start date forward to 2011. In addition, EPA overestimates the capability of flat glass manufacturers, and probably other industry participants, to make last-minute adjustments in their current emissions data collection-and-verification processes or to initiate such a process in order to accommodate whatever changes EPA elects to make in the proposed rule when finally issued in mandatory form.

For the reasons EPA states in the preamble, the glass manufacturing industry does not believe it is practicable, without imposing substantial additional financial and operational burdens on industry, for the glass industry to go back and capture, measure, verify, and then report historical emissions data, including the 2010 data, in the event EPA does not release its final reporting rule until late 2009 or early 2010, too late to capture actual 2010 emissions, in whole or in part. EPA plans to use the reported data as a basis for developing national GHG emissions reduction policy. EPA should make those critical policy decisions based upon accurate, complete data, not upon merely the best information and methods available at the time, one option EPA offers in lieu of monitoring, collecting, and verifying actual emissions data. Glass producers do not operate facilities that "are already implementing the methods required by proposed 40 CFR part 98," as EPA presupposes some industries do (*47 Fed. Reg.* at 16471), and they can not anticipate with a

sufficient degree of accuracy the specific parameters of the final mandatory methodologies for monitoring, collecting, and verifying GHG emissions data to justify investing the scarce resources necessary to begin that monitoring and collection process in advance of the final-rule publication date.

GANA agrees that reporting GHG emissions on an annual basis is appropriate and necessary. It respectfully requests, however, the report-submittal deadline be set at July 1 of each year, six months after the end of the preceding emissions monitoring year. EPA underestimates the time the flat glass manufacturing industry requires to compile, verify, and review the annual data needed for submittal to EPA and to prepare the annual GHG emissions reports, particularly during the first few years of implementation of EPA's new emissions reporting requirements. An annual July 1 reporting deadline allows industry's emissions sources reasonable time to compile the data and perform internal checks on that data before submittal to EPA. Importantly, a July 1<sup>st</sup> reporting timeframe also is consistent with and complements the current deadline for the glass industry to submit its Toxics Release Inventory ("TRI") reports to EPA under EPA's current TRI program and would allow glass manufacturing emissions sources subject to both requirements – GHG and TRI reporting – to coordinate their internal reporting efforts.

**B. Proliferation of Diverse State GHG Reporting Requirements Demands Federal Preemption.**

EPA aptly notes in its preamble that a number of states, including California, currently have in place or are developing GHG emissions reporting

programs. 74 *Fed. Reg.* at 16457. According to EPA's count, 17 states have developed or are developing mandatory GHG reporting rules. 74 *Fed. Reg.* at 16460, n.26. Recognizing this proliferation of reporting systems, EPA states that its own goal ...

is to develop a reporting rule that, to the extent possible and appropriate, would rely on similar protocols and formats of the existing programs and, therefore, reduce the burden of reporting for all parties involved.

74 *Fed. Reg.* at 16457. Yet despite this recognition of potential duplication and its objective to reduce unnecessary reporting burdens, EPA apparently does not intend to preempt any of the state or regional GHG reporting programs. GANA urges EPA to jettison this intention in its final rule and instead adopt a limited, conditional federal preemption policy and procedure.

The very fact that 17 states, a number that apparently continues to grow, have or are developing their own unique GHG reporting systems strongly suggests EPA must relieve industry of the burdens of duplicative reporting, reporting that will differ in its particulars from program to program depending on the state. These state and regional level programs, to the extent they are reporting programs, should be preempted if they satisfy certain criteria: GANA does not urge blanket federal preemption, but preemption should be extended on an industry-by-industry, category-by-category basis. Specifically, EPA should preempt the reporting programs of state and regional systems applicable to the same industries and reporting categories as EPA's reporting rule, but only to the extent their reporting thresholds meet or exceed EPA's and they track generally the same GHG emissions as EPA intends to have industry

measure. EPA apparently is equipped to make these preemption determinations given its own comprehensive file of extant state and regional GHG reporting programs. *See 74 Fed. Reg.* at 16461.

To the extent the state and regional administrators of these non-federal reporting programs require access to the GHG emissions data on a facility-by-facility basis in order to develop GHG reduction policy or for other reasons, EPA may and should make the reported emissions data available to the states and regions for their own purposes, subject, however, to the limitations on disclosure of confidential business information (“CBI”) set forth in 40 CFR § 2.301, including § 2.301(e). And EPA proposes to do precisely that. *See 74 Fed. Reg.* at 16595.

EPA acknowledges that its own proposed reporting regulations for GHG monitoring and calculation methodologies "are the same as, or similar to, the methodologies contained in state reporting programs." *Id.* “Similar to,” perhaps, but they differ in their particulars. Absent federal preemption, some glass production sites will be required to submit GHG reports to more than one regulatory agency which, in some cases, might require different verification, monitoring, and emissions estimation procedures. Strapping industry with a fragmented reporting system such as this is inefficient and time consuming for the regulated entities and is likely to result in inconsistent data. Having one consistent, harmonized, nationally applied emission reporting system will increase the integrity of the data and avoid duplication of effort at the source level.

Federal preemption not only serves to reduce an unnecessary burden on industry, but, with the data's availability to the states as EPA proposes, will not unduly inhibit the efficient submission of GHG emissions data to multiple state and federal program administrators, one of EPA's stated goals. It also will promote achievement of one of EPA's other stated goals, developing a federal rule that will "utilize and be consistent with GHG protocols and requirements of other States and Federal programs ... to make use of existing cooperative efforts and reduce the burdens to facilities submitting reports to other programs." *74 Fed. Reg.* at 16461.

EPA and the U.S. Department of Transportation ("DOT") recently published a joint notice of intent to initiate a joint proposed rulemaking proceeding to establish motor vehicle GHG emissions and CAFE standards. *See 74 Fed. Reg.* 24007 (May 22, 2009). In their joint public notice, EPA and DOT recognize that the two federal administrative agencies intend to develop standards for GHG emissions and for improving fuel economy at the same time that state administrative agencies are or may be developing similar state standards. *47 Fed. Reg.* at 24008. To harmonize and coordinate these diverse and potentially disparate efforts, the public notice indicates that EPA and DOT intend to propose a single "National Program." Although not directly or expressly stated in the joint agency notice, press releases accompanying that notice indicate the resulting planned National Program will preempt all comparable state programs in order to allow a harmonized, consistent national policy to emerge. The eventual joint EPA/DOT notice of proposed rulemaking

should clarify the extent of and conditions for that federal preemption. Nevertheless, this acknowledged need to develop a single GHG emissions standard for motor vehicles serves as precedent within EPA for EPA, also in the name of harmonization, consistency, and efficiency, to mandate federal preemption of GHG emissions reporting for stationary industry sites generally.

**C. State Mandated Third-Party Verification of Data Obviates Need for EPA Verification.**

EPA proposes, as the verification procedure for assuring the accuracy and completeness of the reported GHG data, that reporters self-certify the data and that EPA review the submitted emission estimates and supporting data and undertake steps to verify the accuracy and completeness of those data. 74 *Fed. Reg.* at 16477. GANA agrees with and fully supports this option, but only to the extent EPA consents to preempt all other similar state and regional GHG reporting programs as GANA requests in the preceding section of these Comments. In the absence of such preemption, GANA respectfully requests EPA to modify its proposed rule to accept submitted emissions data without subsequent EPA verification as long as those data have been verified through an existing state- or regionally-mandated third-party verification procedure. California's GHG emissions reporting program has, for instance, such a mandatory third-party verification component.

GANA respectfully submits it would be unduly burdensome and unnecessary for a glass manufacturing site located in California, for example, to provide its emissions report, along with all data necessary for verification of the contents of that report, to two different entities, EPA and CARB, for the

same purpose, independent verification. The resulting double verification of the same data would produce little or no additional benefit. Because the requirements for third-party verification specified in state and regional programs such as CARB's AB-32 reporting program are more stringent than those in EPA's proposed verification plan, acceptance of third-party verification secured through compliance with such a state reporting program, in lieu of subjecting the data to another redundant EPA verification, would ensure the accuracy and completeness of the data.

**D. Certain Flat Glass Manufacturing Data Are Competitively Sensitive, Require Confidentiality Treatment.**

EPA in its preamble indicates it will protect any information claimed as Confidential Business Information ("CBI") in accordance with the dictates of its own regulations, 40 CFR Part 2, Subpart B. 74 *Fed. Reg.* at 16463 and 16595. GANA understands and accepts the fact that EPA-reported "emissions data," as defined in 40 CFR § 2.301(a)(2), are not entitled to CBI treatment. Glass manufacturers will, however, be submitting other competitively sensitive information to EPA as supporting data, information entitled to protection to the extent it qualifies for CBI treatment under the criteria of 40 CFR Part 2, Subpart B. The most critical data will be plant raw-materials usage numbers.

All glass manufacturer-reporters will have to submit information to EPA disclosing, through straight-forward calculations, the amounts of cullet and major carbonates (dolomite, soda ash, and limestone) they use in the batch prepared at each glass production facility. The amount of each raw material included in the batch varies from manufacturer to manufacturer, forming in

essence a unique manufacturer-centric formula for producing flat glass at each facility. Glass producers consider these raw-materials numbers to be trade secrets, highly competitively sensitive information, and thus entitled to protection from public disclosure under the provisions of 40 CFR Part 2, Subpart B. This information is not otherwise available to the general public or competitors and is closely guarded internally by each company to prevent disclosure. Substantial harm to the glass manufacturer's competitive position would result from its disclosure. As a result, the individual glass-producing companies intend to take all necessary and appropriate steps prescribed in EPA's CBI regulations to claim CBI protection and establish entitlement to non-disclosure of this and similar competitively sensitive information.

GANA believes these raw-materials numbers constitute CBI, qualifying and appropriate for a "class determination" pursuant to 40 CFR § 2.207. GANA requests EPA and its General Counsel initiate a CBI class determination with respect to the raw-materials usage numbers of flat glass manufacturers.<sup>1/</sup> A class determination apparently will obviate the need for each glass manufacturer to submit a particularized CBI request with each annual GHG emissions report filed with EPA and then to demonstrate entitlement to CBI treatment.

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<sup>1/</sup> EPA's confidentiality rules are silent as to who may or how to initiate a "class determination" proceeding and the practical effect of such a determination once made. GANA requests EPA to address these issues in its final regulations.

**E. Continuous Compliance Warrants Exclusion From “Once In, Always In” Reporting.**

EPA proposes that once a facility is subject to EPA’s reporting rule because it emits GHG above the designated threshold, that facility must continue to submit annual emissions reports to EPA even though its GHG emissions may fall below the reporting threshold in subsequent years. 74 *Fed. Reg.* at 16470. The stated rationale for the proposed “once in, always in” policy is that EPA wants to position itself to “track trends in emissions and understand factors that influence emissions levels.” *Id.* Despite this laudable objective, EPA recognizes that its implementation could have adverse repercussions for the environment, serving “as a disincentive for some facilities to reduce their emissions.” *Id.* EPA notes that California, concerned about this same negative repercussion, exempts facilities from future reporting once they have achieved three consecutive years of emission levels below the regulatory threshold. GANA fully supports this alternative and urges EPA to adopt it for the very reason that CARB created the exception to its own mandatory state reporting program. This exception or waiver would serve as another material inducement or incentive for emissions sources to implement internal programs to reduce GHG emissions.

GANA urges EPA to keep the exception simple to administer: three consecutive years below the threshold for a specific facility automatically exempts the facility from future reporting unless and until the facility returns to emission levels above the threshold. The facility should not have to apply for an exemption. When the federal program begins, facilities currently below the

threshold will not be required to apply for an exemption from reporting emissions in order to avoid reporting. Why should a facility subject to mandatory reporting have to formally apply for an exemption once its emissions are no longer above the reporting threshold?

**F. De Minimis Emissions Sources Should Be Ignored, Exempted.**

EPA proposes to require glass producing facilities, and all other reporters meeting the emissions thresholds, to report emissions from all stationary combustion sources (except permitted emergency standby engines) for which EPA has provided measurement methods, regardless of the size of the unit or the amount of emissions attributable to that unit. 74 *Fed. Reg.* at 16473, 16478; proposed 40 CFR § 98.30(b). EPA expressly requests comments on this proposal, noting that state and regional emissions reporting programs allow reporters to exclude “a subset of emissions (e.g., 2 to 5 percent of facility-level emissions) or use simplified calculation methods for *de minimis* sources.” Such an exclusion, EPA also notes, “avoid[s] imposing excessive reporting costs on minor emission points that can be burdensome or infeasible to monitor.” 74 *Fed. Reg.* at 16473. EPA proposes to reject this *de minimis* standard on the theory that state programs incorporating this exclusion require reporting at the corporate level, not the facilities level, and that the potential burden is likely to be small because many minor emission sources will not be the subject of EPA-provided measurement methods and thus will be beyond the obligation to report. *Id.*

GANA supports the inclusion of a *de minimis* exception such as the one CARB, a state facilities-reporting program, has accepted for its reporting program. GANA proposes that EPA establish a *de minimis* cut-off level based upon the size of the equipment – that is, its capacity to emit GHG or its maximum heat input capacity – and/or the percentage of emissions attributable to that unit of the facility’s overall emissions. Specifically, GANA requests exemption of *de minimis* emission points with collective annual emissions, when operating at full capacity, that do not exceed five percent of the total facility-level emissions. The additional burden on glass manufacturers necessary to capture small emission sources, such as small space heaters and water heaters, far outweighs any benefit to be derived from the resulting data collected.

## **II. Comments On Specific-Source Categories Requirements.**

### **A. Sites Should Report Electrical Usage Instead of Indirect Emissions.**

EPA propose requiring emission sites to report electrical usage, identifying the supplier of that electricity, instead of reporting indirect emissions from electricity consumption. 74 *Fed. Reg.* at 16479. GANA fully agrees with this concept. Requiring electrical-power users to report indirect emissions could and is likely to result in double-reporting, producing inaccurate data and overstating GHG emissions. It also would be unduly burdensome on electrical-power users such as glass manufacturers, forcing them to find out the details of how each supplier generates the power used at that site. Moreover, electrical generation facilities, required to report emissions

from their power generation, would have more accurate information about how that power is generated and the emissions associated with that generation.

**B. Exclude Emissions From All Defined Emergency Generators.**

EPA proposes exempting from a facility's annual report all emissions from emergency backup generators but only if those generators are designated as emergency generators in the facility's state or local permit. See proposed 40 CFR § 98.30. GANA urges EPA to eliminate this condition and instead exempt measuring and reporting the emissions from any and all emergency generators or backup engines meeting the EPA definition of "emergency generator" specified in proposed 40 CFR § 98.6. The proposed definition is clear and may be consistently applied to all sites regardless of whether the backup generator or engine has been designated as such in a facility permit. Given that definition, their emissions, if any, would be *de minimis* under any reasonable measure and thus would not affect the overall quality of the emissions data for the facility.

**C. Subpart N, Glass Manufacturing: EPA Has Got It Right.**

GANA fully supports EPA's proposed rule for measuring, estimating, monitoring, and reporting emissions from the glass melting process. Subpart N, Part 98 represents a good balance between site reporting burden, cost, and data accuracy and consistency. Specifically, GANA supports using raw-material emissions factors and usage rates, as proposed, to estimate emissions from glass production in lieu of requiring installing CEMs on sources that another regulation does not currently require to be installed. EPA must,

however, protect the confidentiality of the raw-material usage rates that individual flat glass manufacturing producers report to EPA.

Respectfully submitted,

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