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Environmental Protection Agency

EPA Docket Center (EPA/DC)

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Attn: Docket ID No. EPA-HQ-OAR-2013-0602

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Re: Glass Packaging Institute (GPI) – Comments on Docket ID No. EPA-HQ-OAR-2013-0602 – Clean Power Plant Proposed Rule

On behalf of the Glass Packaging Institute (GPI), and in response to the Agency’s proposed clean power plant rule, I am pleased to provide the following comments and information on the U.S. glass container manufacturing industry. GPI is the North American trade association for glass container manufacturers, glass recyclers, and suppliers of materials, equipment and transport to the industry.

Background and Energy Efforts for the Glass Container Industry

The U.S. glass container manufacturing industry currently operates 50 plants, which manufacture approximately 27 billion glass containers, bottles and jars annually. GPI member companies employ approximately 18,000 Americans with high-paying, benefit-provided jobs.

GPI’s members recognize the importance of supporting sustainability initiatives including conserving energy, saving raw materials, reducing air emissions (including NOx, SOx, PM and greenhouse gases such as CO2) and being fully committed to “Reduce / Reuse” in all aspects of plant operations e.g. water, cardboard, lubricants, electricity, etc.

Key to our energy efforts is the utilization of recycled glass as part of the overall batch mix, as its use reduces furnace temperatures and results in reduced energy use and lower greenhouse gas emissions. For glass, one ton of carbon dioxide is reduced for every six tons of recycled container glass used in the manufacturing process. Energy use at the glass plants also drop about 2-3% for every 10% recycled glass used in the manufacturing process. A top priority for GPI is to divert and recycle glass containers to ensure that as many as possible are re-melted in the production of new glass containers.

The glass container industry has increased its use of recycled glass on average in the manufacturing process by nearly 8% over the past 5 years. The glass container industry's effort to obtain clean, recycled glass varies from state to state, with companies spending significant capital to transport recycled glass to plant locations. This overall effort is just one demonstration of the industry's efforts to reduce greenhouse gas emissions, use less energy, save natural resources and avoid limited landfill space.

Similar to many U.S. manufacturing industries, the glass container manufacturing companies are subject to foreign and often un-regulated competition. As such, the glass container industry has been categorized as an "energy-intensive, trade-exposed" (EITE) industry. Existing and emerging state and federal regulations regarding emissions and energy use have contributed to an increase in imports of largely under-regulated glass containers and other competitive packaging by nearly 30% over the last five years. Due in part to these regulations, the glass container manufacturing plant presence in the US has been reduced in half since the 1990s.

As manufacturing consumes 26% of all U.S. electricity, the glass container manufacturing and other industries will feel a significant portion of the costs of increased electricity prices. EITEs also include the majority U.S. industries producing chemical, plastics, steel, iron ore, aluminum, paper, food and beverage, nitrogen fertilizer, industrial gases, oil refining, and cement, consuming 80% of all energy within manufacturing sector and 15.8% of overall U.S. energy consumption.

Manufacturing also consumes roughly 29% of U.S. natural gas and will also be directly harmed if, as EPA projects, increased use of natural gas for electricity generation raises the price for natural gas.

The glass container manufacturing industry is a significant purchaser of energy, which is required in order to keep our plants running 24 hours a day, 7 days a week. Depending upon its location, each plant pulls its electricity and power from a variety of sources. The proposed rule and pressure placed upon our suppliers of energy may result in costly fuel switching (which may not even be feasible based upon power plant locations), increasing and/or instable fuel pricing, or worse, future plant closures due to pass-thru costs.

Challenges to the Proposed Rule

Specifically, GPI does not believe the EPA has the authority to fundamentally restructure the energy sector under CAA § 111(d). Under CAA § 111(d), EPA is authorized to regulate existing sources within a specific source category (here, fossil fuel-fired EGUs). Historically, on the limited occasions EPA has invoked CAA § 111(d), it has operated within the bounds of its delegated authority and set guidelines for States under § 111(d) that require technology-based standards of performance that could be implemented by the facilities in the affected source category.

In contrast, this proposed rule reaches far beyond the affected source category and requires emissions reductions that can only be met by looking beyond the sources that are the actual subject of the regulation (fossil fuel-fired EGUs) to the rest of the energy sector as well as consumer demand for electricity. In implementing this regulation, EPA seeks to elevate itself to

be the country's premier regulator of energy, which is well beyond its authority in the Clean Air Act to address air pollution and is in violation of federal and state laws.

This broad assertion of power is unlawful and exceeds the authority that Congress delegated to EPA under the Clean Air Act. As the Supreme Court recently explained, “[when an agency claims to discover a long-extant and unheralded power to regulate ‘a significant portion of the American economy’ ... we typically greet its announcement with a measure of skepticism.” *UARG v. EPA*, 134 S.Ct. 2427, 2444 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)).

This is particularly true when an agency claims authority to regulate subjects traditionally left to the States. See *Bond v. United States*, 134 S.Ct. 2077, 2083 (2014) (“Absent a clear statement of that purpose, we will not presume Congress to have authorized such a stark intrusion into traditional state authority.”).

EPA's assertion of power here is far greater than the issue that gave the Court concern in the *Utility Air Regulatory Group (UARG)* decision, as the EPA is utilizing a relatively limited provision of the Clean Air Act as the basis for asserting full regulatory authority over anyone who produces or consumes electricity and to prescribe the energy portfolio of 49 States between now and 2030.

To that end, the initial compliance date for the proposed rule is 2020, not 2030. The state emissions reduction targets that EPA has proposed are steep at the outset, and states must undertake significant emissions reductions immediately to comply with those standards by 2020. As a result, utilities are impacted today, as they and states must take measures now designed to promote compliance with the proposed standards, which take effect in 2020.

In order to meet the 2020 targets, utilities will be forced to accelerate plans to retire certain coal-fired EGUs before the end of their remaining useful life and, at the same time, will have to accelerate plans to construct alternative generating capacity to replace them. Given the long timeline (five years or more) to obtain permitting approval and construct new power plants, utilities will have to begin that process in the immediate future to meet obligations under the initial compliance period of 2020.

Due to the above cited challenges to EPA authority, appropriateness of the timeframe for implementation, and absent serious consideration of the manufacturing facilities that depend upon consistent sources of power and energy for plant operations, we respectfully request the EPA withdraw the proposed rule in its entirety, until these issues can be both properly recognized and addressed.

Regards,



Lynn M. Bragg

President