



December 15, 2010

Filed Electronically

Clerk of the Board

California Air Resources Board

1001 I Street

Sacramento, CA 95814

<http://www.arb.ca.gov/lispub/comm/bclist.php>

Re: Comments on CARB Board Item “ghg2010”: Proposed Amendments to the Regulation for Mandatory Reporting of Greenhouse Gas Emissions

Dear Sir or Madam:

Effective April 2010 all Saint-Gobain glass packaging businesses around the globe (including Saint-Gobain Containers, Inc. in the U.S.) became a single brand: Verallia.

On behalf of Verallia, this letter timely provides public comments on the California Air Resources Board’s proposal to consider amendments to the regulation for mandatory reporting of greenhouse gases (“GHGs”). Verallia operates 13 glass container manufacturing facilities across the United States that employ over 4,500 employees and produce billions of glass containers per year for food, beverages, beer, spirits, and wine. Among those facilities, Verallia operates a glass container facility in Madera, California, that is subject to California’s Mandatory Reporting Regulation for GHGs (“MRR”) and therefore directly affected by this rulemaking.

Comments on the Proposed Amendments to the MRR

Except as noted below, Verallia generally supports the proposed amendments to the MRR. Verallia understands CARB Staff’s purpose for the proposed amendments (on p.3 of the Public Notice for this Board Item) is to:

- (1) harmonize with the U.S. EPA national greenhouse gas reporting requirements, (2) ensure sufficient accuracy and completeness in reporting to support a California greenhouse gas market-based cap-and-trade system, and (3) eventually, support linkage with a WCI [Western Climate Initiative] regional market system.

Similarly, Verallia understands CARB Staff’s approach, which “has been to start with the U.S. EPA reporting requirements, and then provide additional stringency or specificity where *needed* to support California cap-and-trade and WCI consistency.” *Id.* (emphasis added). Thus, broadly speaking, Verallia supports the purpose and approach for the proposed MRR revisions.

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Verallia has concerns with some details of the proposed amendments to the MRR because they are unnecessarily inconsistent with the federal GHG reporting rule and do not support the rulemaking's goals. As explained in greater detail below, Verallia urges CARB and CARB Staff to consider the following comments on the proposed revisions of the MRR and make the changes recommended below.

1. To the greatest extent possible, promote and maintain consistency with the federal GHG reporting program.

In discussing the basis for the "glass production" portion of the MRR, the Staff Report (on p.57) confirmed the overall program goal of achieving consistency with the federal GHG reporting program and the important reasons for doing so:

By aligning with the wording of the U.S. EPA regulation as we develop requirements suitable for cap-and-trade, we are able to reduce duplication of effort, questions of interpretation, costs, and complexity for reporters.

Unfortunately, Verallia believes that CARB staff has not justified the proposed deviations from the federal program and, as a result, some of the MRR proposal unnecessarily adds to the already significant risks and burdens on industry for complying with California's GHG-related programs, including the related implications of CARB's proposed Cap and Trade program.

2. Eliminate the suggested requirement to report the "[a]nnual quantity of packed or sellable glass produced" from the MRR proposal for the "Glass Production" sector.

The proposed revisions to the MRR add 17 CCR § 95116, which establishes the MRR's specific requirements for the "Glass Production" sector. Although § 95116 largely incorporates the federal GHG reporting requirements (e.g., principally from 40 CFR Part 98, Subparts C and N), proposed § 95116(d) requires "additional data to support benchmarking" that is not required by the federal program. Specifically, the proposed § 95116(d)(1) would require additional reporting of the "[a]nnual quantity of packed or sellable glass produced" for purposes of establishing the GHG emissions efficiency benchmark ("EEB") for the container glass sector.

Verallia strongly suspects that the request for "packed or sellable glass" is an oversight that should be corrected by eliminating § 95116(d) because "glass pulled" is the product output metric being promulgated in the Cap and Trade regulations. CARB Staff and the glass industry alike have already decided to define the EEB in terms of "glass pulled." The most compelling proof of this decision appears in CARB's proposed Cap and Trade program at 17 CCR § 95891. *See* CARB Staff Report at Appendix A (Proposed Regulation Order), available online at <http://www.arb.ca.gov/regact/2010/capandtrade10/capv1appa.pdf>. Specifically, CARB's proposed § 95891 includes "Table 9-1: Product Output for Establishing Emissions Efficiency Benchmarks," which specifies "glass pulled" as the only GHG benchmarking "product output" for each of the glass manufacturing sectors, i.e., for the flat glass, container glass, and mineral wool sectors. Thus, there is no need for requiring the annual reporting of "packed or sellable glass" pursuant to the proposed MRR because CARB already committed itself to "glass pulled" as the product output for the EEB.



While we believe the inclusion of the packed or sellable glass language is a mere oversight, if CARB is actively considering the requirement at § 95116(d)(1) to require annually reporting of “packed or sellable glass” for EEB purposes, CARB should abandon that novel approach in favor of continuing to rely on the use of data expressing “glass pulled.” In addition to the issues raised above (i.e., inconsistency with the proposed Cap and Trade program and ongoing efforts to establish an EEB using glass pull data), some additional factors counsel against changing the EEB process to now adopt “packed or sellable glass” as the product output.

Verallia opposes providing the “quantity of packed or sellable glass produced” because the information is proprietary and constitutes “trade secret” information under California law. *See, e.g.*, California Civil Code §§ 3426.1-11; *compare* 40 CFR Part 2 (defining “Confidential Business Information” under federal law). Although proposed § 95106 *potentially* preserves industry’s ability to claim this proprietary information as “trade secret,” it remains unclear whether CARB or a third party (such as an environmental group) might take the position that “packed or sellable glass produced” data is not protected, e.g., because it meets the definition of “emissions data.” Further, even if the courts ruled that the “quantity of packed or sellable glass produced” is protected as a “trade secret,” the annual reporting of that information would both limit the ability to convey that information electronically (given the need for heightened security precautions for trade secret information) and increases the likelihood of an inadvertent disclosure. As such, Verallia opposes § 95116(d) because it would require the mandatory disclosure of trade secret information that is unnecessary for the EEB.

Based on the above considerations, Verallia urges CARB to strike the suggested data reporting requirement at § 95116(d).

3. Properly account for the limitations of prior GHG reporting under the MRR.

As noted on p.57 of the Staff Report, the MRR did not previously account for “process-related” GHG emissions from the Glass Production sector. As a result, CARB should avoid reliance on the past GHG data provided pursuant to the existing MRR for the Glass Production sector because it lacks information on the process-related GHG emissions.

4. Promote the use of consistent units of measurement.

Since the MRR is intended to complement other GHG-related programs (e.g., in California, in other WCI jurisdictions, at the federal level, and internationally), it is essential to ensure the use of consistent units of measurement. In particular, some data is required in units of “metric tons” while other data is provided in “short tons.” To the extent that using both units is unavoidable, Verallia suggests that every use of the term “ton(s)” in the MRR and elsewhere (including supporting documents) be clearly labeled as a “metric ton” or “short ton” to limit confusion and avoid calculation errors.



On behalf of Verallia, thank you for the opportunity to comment on the rulemaking activity.

Sincerely,

Steven B. Smith
V.P. Environmental and Regulatory Affairs

c: Bruce Tuter, CARB
Kevin Kennedy, CARB
Stephen A. Segebarth
Ty Sibbitt