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June 9, 2009

U.S. Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mailcode 3102T
Attention Docket ID No. EPA-HQ-OAR-2008-0508
1200 Pennsylvania Avenue, NW
Washington, DC 20460

**RE: EPA-HQ-OAR-2008-0508: Mandatory Reporting of Greenhouse Gas Emissions,
Proposed Rule, 74 *Fed. Reg.* 16448 (April 10, 2009)**

Dear Sir/Madam:

The Associated General Contractors of America (AGC) submits these comments in response to the U.S. Environmental Protection Agency's (EPA) proposed rulemaking that would require mandatory reporting of greenhouse gases (GHGs) from all sectors of the economy. AGC

The construction industry, residential and nonresidential, is not itself a significant source of greenhouse gas emissions. According to EPA estimates, the equipment used in construction and mining (combined estimate) generated 0.95 percent of U.S. greenhouse gas emissions in 2007.¹

The construction industry makes a disproportionately large contribution to the economy; it is a significant source of jobs and a major purchaser of U.S. manufactured products. Construction spending totaled \$1.14 trillion (8.2 percent of gross domestic product (GDP)) in 2007; nonresidential spending amounted to \$638 billion—or 56 percent of total construction.² In 2005, there were 778,000 construction firms with 6.8 million paid employees. Despite its enormous size, the construction industry primarily is made up of small businesses. In 2005, 92 percent of construction firms had fewer than 20 employees. Only 1 percent had 100 or more. The average employment was less than nine employees per firm. More than two million additional construction firms had no paid employees—mainly self-employed individuals but also partnerships and holding companies.³ Shipments of construction materials and supplies in 2007 totaled \$518 billion—more than 10 percent of all U.S. manufacturing shipments. Construction machinery shipments totaled \$28 billion—8 percent of all machinery shipments.

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maintains that its reporting rule will inform and support future requirements for controls of such emissions. EPA was not charged with developing an ongoing reporting program that will address all emissions from all sources; and the agency has discretion in determining what sectors must report, the emissions threshold that would trigger such reporting (must include large emitters), and for how long regulated facilities must report.

D. Reporting Schedule Does Not Allow Sufficient Time for Facilities To Determine Whether They Must Report and To Establish a Procedure for Compliance

Under the proposal, a regulated facility owner or operator must collect emissions data, calculate GHG emissions, and follow quality assurance, missing data, and recordkeeping reporting requirements. The proposed rule would require such measurement and monitoring to begin January 1, 2010—*a date just slightly more than six months from the date comments are due on the proposed rule*. Facilities covered by the rule would need to submit their first annual report by March 31, 2011 for the calendar year 2010.

This timeframe does not provide adequate time for outreach and education to small businesses—as well as the potentially affected homeowners and owners of commercial buildings—to help them determine whether their facilities are covered by the rule and to establish a framework for monitoring and reporting.

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G. Extreme Penalties for Non-Compliance with Reporting Requirements

The proposed rule establishes a strict enforcement policy under the Clean Air Act. According to the proposed rule—

“Facilities that fail to report GHG emissions according to the requirements of the proposed rule could potentially be subject to enforcement action by EPA under CAA sections 113 and 203-205. The CAA provides for several levels of enforcement that include administrative, civil, and criminal penalties. The CAA allows for injunctive relief to compel compliance and civil and administrative penalties of up to \$32,500 per day.”

The proposed rule goes on to reference deviations (e.g., failure to collect data, to report data, failure to continuously test and monitor) that could ultimately be considered a violation. The proposed rule does not limit EPA to those deviations listed in the proposed rule.

AGC urges EPA to recognize the large number of small facilities that may be impacted by the proposed rule and the inexperience they may have with meeting reporting requirements. Even facilities that are familiar with reporting under separate programs occasionally have errors and deviations. EPA should allow for a learning curve for the new requirements and establish an enforcement strategy that includes several options such as warning letters, citations, and “right to cure” provisions. EPA could push back the reporting dates for some facilities based on low levels of emissions. AGC encourages EPA implement a flexible enforcement policy, especially if EPA decides to require reporting from small emitters, such as homes and commercial buildings. Due to the short period of time EPA is allowing before the proposed rule is finalized and goes into effect, it is entirely reasonable to expect that many facilities will not know whether they are required to report emissions and/or have not coordinated the steps necessary to assess their emissions level. In addition, EPA noted that it plans to produce several sector-specific compliance assistance tools, but the agency did not commit to having these available in time to prepare the newly regulated businesses.

H. EPA Should Exempt Residential and Non-Residential Commercial Buildings from the Reporting Requirement Tcs

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between 75 to 80 percent of commercial buildings would not be required to report as their equipment typically have a maximum rated heat input capacity of less than 10 mmBtu.

Based on EPA's own estimates that very few of these buildings will fall within the threshold for reporting, AGC suggests that EPA exempt residen

IV CONCLUSION

In conclusion, AGC urges the agency to take small emitters from the onerous and expensive measuring, and reporting emissions. EPA's against the percentage of GHG emissions by agency to provide additional time to assess the additional time (or a phased in approach) be in light of the extreme penalties for associations, like AGC, with the business community and prepare

Sincerely,

A handwritten signature in cursive script that reads "Melinda Tomaino". The signature is written in black ink and is positioned above the printed name and title.

Melinda L. Tomaino
Director, Green Construction