



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: ENF-AT

FEB - 1 2012

CERTIFIED MAIL # 7009 3410 0000 2592 0486
RETURN RECEIPT REQUESTED

John Kester
Vice President and Plant Manager
Rocky Mountain Bottle Company, LLC
10619 West 50th Ave.
RR836
Wheat Ridge, CO 80033

Re: Notice of Violation
Rocky Mountain Bottle Company, LLC

Dear Mr. Kester:

The United States Environmental Protection Agency (EPA) is issuing the enclosed Notice of Violation (NOV) to Rocky Mountain Bottle Company, LLC (RMBC) pursuant to section 113 of the Clean Air Act (the Act), 42 U.S.C. § 7413. EPA finds that RMBC is violating the Prevention of Significant Deterioration of Air Quality, Nonattainment New Source Review, and Title V requirements of the Act and the Colorado State Implementation Plan at RMBC's facility in Wheat Ridge, Colorado.

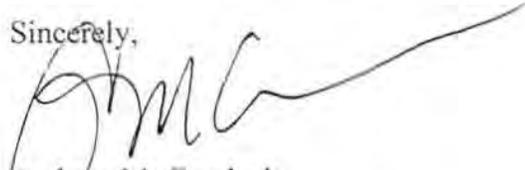
As indicated in the NOV, EPA is offering representatives of RMBC an opportunity to confer with us about the violations alleged in the NOV. If RMBC chooses to have such a conference, the company may present information on the specific findings of violation, any efforts that have been taken to comply, and the steps that will be taken to prevent future violations.

If a conference is requested, please plan for facility technical and management personnel to attend to discuss compliance measures and commitments. RMBC may choose to have an attorney represent it at this conference. RMBC should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. If RMBC requests a conference, EPA will strive to hold the conference within 30 calendar days of your receipt of this letter.

EPA reserves its enforcement authority under section 113 of the Act, 42 U.S.C. § 7413. EPA's enforcement options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

Should you have any questions, please direct technical issues to Hans Buening, Environmental Engineer, at (303) 312-6486, and legal matters to Sheldon Muller, Senior Enforcement Attorney, at (303) 312-6916.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosure

cc (w/ encl.):

Will Allison, Director
Air Pollution Control Division
Colorado Department of Public Health and Environment

Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 FEB -1 AM 11:40

IN THE MATTER OF)
)
Rocky Mountain Bottle Company, LLC)
)
10619 West 50th Ave.)
Wheat Ridge, CO)
)
Respondent.)
_____)

NOTICE OF VIOLATION
EPA REGION VIII
PREPARING CLERK
Docket No. CAA-08-2012-0002
Proceedings Pursuant to Sections
113(a)(1) and (3) of the Clean Air Act,
42 U.S.C. § 7413(a)(1) and (3)

STATUTORY AUTHORITY

The United States Environmental Protection Agency (EPA) is issuing this Notice Of Violation (NOV) to Rocky Mountain Bottle Company, LLC (Respondent) for violations of the Clean Air Act (the Act) and the Colorado State Implementation Plan (SIP), at its glass manufacturing plant located in Wheat Ridge, Jefferson County, Colorado (the Facility).

This NOV is issued pursuant to Sections 113(a)(1) and (3) of the Act, as amended on November 15, 1990 by P.L. 101-549, 42 U.S.C. § 7413(a)(1) and (3). The authority to issue NOV's has been delegated to the Regional Administrator of EPA Region 8, and redelegated to the Assistant Regional Administrator of EPA Region 8's Office of Enforcement, Compliance and Environmental Justice. A description of the regulatory background, the relevant facts, and a list of the specific violations identified by EPA are outlined below. The geographical jurisdiction of EPA Region 8 includes the State of Colorado.

STATUTORY AND REGULATORY BACKGROUND

1. The Act is designed to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

Requirements for New Source Review Permits

2. On June 19, 1978, EPA promulgated the Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492. 43 Fed. Reg. 26388. Federal PSD regulations are codified at 40 C.F.R. § 52.21. The New Source Review (NSR) provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning to make a major modification, then that source must obtain either a PSD permit or a nonattainment NSR (NNSR) permit, depending on whether the source is located in an attainment or unclassifiable area, or in a nonattainment area, for the pollutant being increased above the significance level. To obtain the required permit, the source must agree to install the Best Available Control Technology

(BACT) in an attainment or unclassifiable area, or achieve the Lowest Achievable Emission Rate (LAER) in a nonattainment area.

3. Section 165(a) of the Act, 42 U.S.C. § 7475, provides, among other things, that no major emitting facility on which construction is commenced after Aug. 7, 1977, may be constructed or modified in any area that is in attainment with the National Ambient Air Quality Standards (NAAQS) unless:

- a. a preconstruction PSD permit has been issued for the proposed facility or modification;
- b. the proposed permit has been subject to a review in accordance with Section 165 of the Act, the required analysis has been conducted in accordance with the PSD regulations, and a public hearing has been held with opportunity for interested persons to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;
- c. the owner or operator of such facility demonstrates, as required pursuant to section 110(j) of the Act, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (1) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which the PSD regulations apply more than one time per year, (2) NAAQS in any air quality control region, or (3) any other applicable emission standard or standard of performance under the Act;
- d. the proposed facility is subject to the best available control technology for each pollutant subject to regulation under the Act emitted from, or which results from, such facility;
- e. the provisions of Section 165(d) with respect to protection of class I areas have been complied with for such facility;
- f. there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility; and
- g. the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under the PSD regulations agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source.¹

4. 40 C.F.R. § 52.21(a) provides that the PSD regulations apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Sections 107(d)(1)(A)(ii) or (iii) of the Act.

¹ All references to the Colorado SIP, the Clean Air Act, and the Code of Federal Regulations (C.F.R.), unless stated otherwise, are to the SIP, the Act, and the C.F.R. that were in effect at the time of the violations set forth in this NOV.

5. 40 C.F.R. § 52.21(i)(1) provides that no stationary source or modification to which the requirements of 40 C.F.R. § 52.21(j) through (r) apply may begin construction without a permit which states that the stationary source or modification will meet those requirements.

6. 40 C.F.R. § 52.21(i)(2) and (3) provide that the requirements of 40 C.F.R. § 52.21(j) through (r) are applicable to any major stationary source and any major modification that would be constructed in an area designated under the Act as in attainment with the NAAQS, with respect to each pollutant subject to regulation under the Act.

7. Sections 110 and 161 of the Act, 42 U.S.C. §§ 7410 and 7471, require that each SIP include a PSD permit program. EPA approved Colorado's PSD program as part of the Colorado SIP on September 2, 1986 and the approval became effective that same date. 51 Fed. Reg. 31125. EPA approved subsequent modifications to the portion of Colorado's SIP related to Colorado's PSD program, including approvals dated February 13, 1987, June 15, 1987, December 1, 1988, March 28, 1991, June 17, 1992, September 27, 1993, and August 18, 1994.

8. The Colorado SIP for PSD and NNSR provides that no emission unit or source subject to that rule shall be constructed without obtaining an air construction permit that meets the requirements of that rule. The PSD and NNSR provisions of the Colorado SIP can be found in the Colorado Air Quality Control Commission Common Provisions and Regulation No. 3, 5 CCR 1001-2 and 1001-5. Since the Common Provisions and Regulation No. 3 are part of the Colorado SIP, they are federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. § 7410 and § 7413.

9. The Colorado SIP and 40 C.F.R. § 52.21(b)(1)(i) define a "major stationary source" as, *inter alia*, any stationary source that emits or has the potential to emit 250 tons per year or more of any air pollutant subject to regulation under the Act. For purposes of determining applicability of major NNSR review in a nonattainment area and the applicability of Regulation 3, Part B, Section IV.D.2, the Colorado SIP defines "major stationary source" as any stationary source of air pollutants which emits, or has the potential to emit, one hundred (100) tons per year or more of any pollutant regulated under the Act for which the area is nonattainment. Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section I.B.3.a (applicable to NNSR) and I.B.3.b.ii (applicable to PSD) (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.58, *see* "Major Stationary Source," subsections a. (applicable to NNSR) and b.ii (applicable to PSD) (Colorado SIP 110(h) Compilation as of 11/15/1998).² As of August 18, 1994, in the Denver Metropolitan PM-10 (particulate matter with a diameter of 10 micrometers or less) nonattainment area, any net emissions increase that is significant for sulfur dioxide (SO₂) or nitrogen oxides (NO_x) shall be considered significant for PM-10.

10. The Colorado SIP and 40 C.F.R. § 52.21(b)(2)(i) define a "major modification" as any physical change in or change in the method of operation of a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section I.B.2 (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission

² The cited references of authority were substantively the same at the time of the 1991 plant modifications referenced in paragraph 41.

Regulation No. 3, 5 CCR 1001-5, Part A, Section I. B.35.B (Colorado SIP 110(h) Compilation as of 11/15/1998).

11. The Colorado SIP and 40 C.F.R. § 52.21(b)(3)(i) define “net emissions increase” as the amount by which the sum of the following exceeds zero:

- a. Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
- b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

See “Common Provisions Regulation”, 5 CCR 1001 – 2 Section I.G, *see* “Net Emission Increase,” subsections a.i and ii (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.36.a.i and ii (Colorado SIP 110(h) Compilation as of 11/15/1998).

12. The Colorado SIP and 40 C.F.R. § 52.21(b)(21) define “actual emissions” as the rate of emissions of a pollutant from an emissions unit, which, as of a particular date, are the actual emissions, in tons per year, at which the unit emitted the pollutant during a two-year period which precedes the particular date and is representative of normal unit operation, and are calculated using actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. *See* “Common Provisions Regulation”, 5 CCR 1001 – 2 Section I.G, “Actual Emissions,” subsections a and c (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.1.a and c (Colorado SIP 110(h) Compilation as of 11/15/1998).

13. The Colorado SIP and 40 C.F.R. § 52.21(b)(23) define “significant” and state that in reference to NO_x and SO₂, significant net emissions increase means an emissions rate that would equal or exceed 40 tons or more per year of NO_x, or 40 tons or more per year of SO₂. 40 C.F.R. § 52.21(b)(23)(i). *See* “Common Provisions Regulation”, 5 CCR 1001 – 2 Section I.G, “significant,” subsection a (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.57.a (Colorado SIP 110(h) Compilation as of 11/15/1998).

14. An applicant for a permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.B.2-3 (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Section IV.B.2-3 (Colorado SIP 110(h) Compilation as of 11/15/1998).

15. The Colorado SIP states that “...no person shall commence construction of any stationary source or modification of a stationary source without first obtaining or having a valid construction permit...” . Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Sections I.A and III.A.1 (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control

Commission Regulation No. 3, 5 CCR 1001-5, Part B, Sections I.A and III.A.1 (Colorado SIP 110(h) Compilation as of 11/15/1998). The Colorado SIP further requires, *inter alia*, that a source subject to PSD regulations undergo a control technology review, install BACT, and conduct air quality modeling. Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Sections IV.D.3.a and IV.D.3.a.i-vi (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Sections IV.D.3.a and IV.D.3.a.i-vi (Colorado SIP 110(h) Compilation as of 11/15/1998). *See also* 40 C.F.R. § 52.21(i) which prohibits the construction of any new major stationary source or any major modification without a permit which states that the source or modification would meet the requirements of 40 C.F.R. § 52.21(j) through (r). 40 C.F.R. § 52.21(i)(2) and (3) provide that the requirements of 40 C.F.R. §§ 52.21(j) through (r) are applicable to any major source and any major modification that would be constructed in an area designated under the Act as in attainment with the NAAQS, with respect to each pollutant subject to regulation under the Act.

16. The Colorado SIP and 40 C.F.R. § 52.21(b)(12), define “BACT” as an emissions limitation based on the maximum degree of reduction for each regulated PSD pollutant that would be emitted from any proposed major modification while taking into account energy, environmental, and economic impacts and other costs. 42 U.S.C. § 7479(3). *See* “Common Provisions Regulation”, 5 CCR 1001 – 2 Section I.G, “Best Available Control Technology” (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.12 (Colorado SIP 110(h) Compilation as of 11/15/1998).

17. Section 107(d) of the Act, 42 U.S.C. § 7407(d), requires each state to designate those areas within its boundaries in which the air quality has attained the NAAQS, those areas in which air quality has failed to attain the NAAQS, and those areas which cannot be classified due to insufficient data. The Act also requires EPA to promulgate a list of these areas and their attainment status.

18. On August 7, 1987, the Denver metropolitan area (including Jefferson County) was designated as a “Group I” nonattainment area (area with a strong likelihood of violating the PM-10 NAAQS) for PM-10 (52 FR 29383). Pursuant to the 1990 Clean Air Act Amendments and Section 107(d)(4)(B), the Denver area was designated as a “moderate” PM-10 nonattainment area. On September 16, 2002, the Denver area was redesignated as attainment for PM-10.

19. On March 3, 1978, EPA designated the Denver-Boulder metropolitan area (including Jefferson County) as nonattainment for the NAAQS for ozone (43 FR 8976). This designation, which was for the 1-hour ozone standard then in effect, was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to Section 107(d)(1) of the Clean Air Act, as amended in 1990, classifying the Denver-Boulder metropolitan area (including Jefferson County) as a transitional ozone nonattainment area. On September 11, 2001 (effective October 11, 2001), EPA redesignated the Denver-Boulder metropolitan area to attainment for the 1-hour ozone NAAQS (66 FR 47086). In April 2004, EPA designated the Denver-Boulder metropolitan area (including Jefferson County) as nonattainment for the 8-hour ozone NAAQS, but deferred the effective date of the designation based on a commitment from state and regional agencies to implement measures set forth in the Denver Early Action Compact for Ozone. On November 20, 2007, the deferral expired, and the Denver-

Boulder-Greeley-Ft. Collins-Loveland, areas (including Jefferson County) became nonattainment for the 8-hour ozone NAAQS.

20. On August 18, 1994, EPA conditionally approved Colorado's SIP revisions, which included nonattainment NSR provisions for sources of PM-10 precursors, NO_x and SO₂, in the Denver metropolitan PM-10 nonattainment area. *See* 59 FR 42500. In 1997, EPA approved subsequent amendments to Colorado's SIP concerning Colorado's nonattainment NSR rules.

21. Sections 171-193 of the Act, 42 U.S.C. §§ 7501-7515, impose SIP requirements for nonattainment areas. Among other things, the statute requires that states adopt SIP provisions establishing an NNSR program which includes permitting requirements and other requirements governing construction and operation of new and modified major sources in nonattainment areas. Pursuant to Section 173(a)(2) of the Act, a state's NNSR program must include a mandate that any modified source comply with LAER. 42 U.S.C. § 7503(a)(2). Section 173(a)(1) of the Act specifies that a state's NNSR program must also include provisions requiring the modified source to obtain offsetting emissions reductions, 42 U.S.C. § 7503(a)(1). The State of Colorado's regulatory provisions specific to NNSR are set forth in Section IV.D.2 of Regulation No. 3. *See* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Section IV.D.2.a (Colorado SIP 110(h) Compilation as of 11/15/1998).

22. The Colorado SIP and Section 171(3) of the Act define "LAER" as the most stringent emission limitation which is achieved in practice or can reasonably be expected to occur in practice by such class or category of source, taking into consideration the pollutant which must be controlled. In no event can LAER be an emission limit greater than that allowed under an applicable New Source Performance Standard. As of May 30, 1995, the Colorado SIP also required that LAER consist of the most stringent emission limit contained in any SIP for such class or category of stationary source (unless the owner or operator of the proposed source demonstrates that such limits are not achievable). *See* "Common Provisions Regulation", 5 CCR 1001 - 2 Section I.G, "Lowest Achievable Emission Rate" (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.32 (Colorado SIP 110(h) Compilation as of 11/15/1998). *See also* Section 171(3)(A) of the Act, 42 U.S.C. § 7501(3)(A).

Requirements for Title V Operating Permits

23. Section 502(a) of the Act, 42 U.S.C. § 7661a(a) provides that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

24. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), calls upon each State to develop and submit to EPA an operating permit program to meet the requirements of Title V.

25. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See* 57 Fed. Reg. 32295; 40 C.F.R. Part 70.

26. EPA granted interim approval to the Title V operating permit program submitted by the State of Colorado effective February 23, 1995. 60 Fed. Reg. 4563 (January 24, 1995); 40 C.F.R. part 70, Appendix A.. Effective October 16, 2000, EPA granted full approval to Colorado's Title V operating permit program. 65 Fed. Reg. 49919 (August 16, 2000).
27. Section 503 of the Act, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application.
28. Section 504(a) of the Act, 42 U.S.C. 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan.
29. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted, and 40 C.F.R. § 70.6 specifies required permit content. *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Sections III and V (CO SIP 110(h) Compilation as of 11/15/95).
30. 40 C.F.R. § 70.1(b) provides that "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Sections II and V (CO SIP Compilation as of 11/15/95).
31. 40 C.F.R. § 70.2 defines "applicable requirement" to include, "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter..." *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Section V (CO SIP 110(h) Compilation as of 11/15/95).
32. 40 C.F.R. § 70.5(b) provides that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Section IV (CO SIP 110(h) Compilation as of 11/15/95).
33. 40 C.F.R. § 70.7(b) provides that no source subject to Part 70 requirements may operate without a permit issued under a Part 70 program. *See also* Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part C, Section II.A.1 and 2, (CO SIP 110(h) Compilation as of 11/15/95).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

34. The Facility is located at 10619 West 50th Avenue in Wheat Ridge, Colorado. The Facility is engaged in the manufacture of glass containers for the food and beverage industry. The Facility was purchased by the Adolph Coors Company in 1976. In 1989, the Adolph Coors Company became the Coors Brewing Company. In or around 1995, Anchor Glass and Coors Brewing Company entered into a joint venture, called Rocky Mountain Bottle Company, to own and operate the Facility. Currently, the Facility is a joint venture of Owens-Brockway Glass Container, Inc. and MillerCoors, LLC in which each has a 50% interest in Rocky Mountain Bottle Company, LLC. Respondent is a limited liability company authorized under the laws of the State of Colorado.

35. Respondent is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

36. The Facility consists, in part, of two natural-gas-fired end port regenerative glass-melting furnaces (Furnaces A & B) and one natural gas over-fire/oxy-fuel furnace (Furnace C). The Facility also includes equipment that supports the glass manufacturing process, such as forming machines and cullet processing.

37. The Facility is located in Jefferson County, Colorado. Jefferson County was designated as a non-attainment area for PM-10 and ozone during the time of the 1991 modification and the 1995-1999 furnace modifications referenced below, and is currently designated as nonattainment for the 8-hour ozone standard. 40 C.F.R. § 81.306.

38. The three furnaces operated by Respondent are subject to Title V Operating Permit No. 95OPJE053, issued to Respondent on October 1, 2001, last revised October 6, 2004, as well as applicable requirements of underlying Construction Permit No. 92JE129-1.

39. The Facility emits or has the potential to emit at least 250 tons per year of NO_x and SO₂ and is a "major stationary source" under the Act and the Colorado SIP for PSD, NNSR and Title V.

40. EPA issued information requests pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, (Information Requests) dated May 31, 2008 and May 27, 2009, requiring Respondent to submit specific information regarding the Facility.

41. Respondent responded to EPA's Information Requests with submittals dated June 16, 2008, and August 11, 2009 (Respondent's Responses). Respondent's Responses discussed modifications to Furnace A in 1991, which included, but were not limited to, modifications to the melter, regenerator, and forehearth/refiners that were to occur in conjunction with rebricking. These changes resulted in a "significant net emissions increase" of NO_x.

42. Respondent's Responses to EPA's Information Requests also detailed information related to modifications of the three glass furnaces in or about 1995, 1996, and 1999 (the Furnace Expansion Project) that included, but were not limited to, "extensive reworkings of many of the plant operations" and "increased production by approximately 40%." As described in a 1994 permit

application, "Phase 1 activities would include the re-machining of Furnace 1, and the addition of staged combustion capability to Furnace 1. Both phase 2 and phase 3 would include the remachining of the respective furnaces to [narrow neck press and blow] NNPD glass forming machines and the addition of staged combustion capability."³

43. The 1991 modification to Furnace A constituted a "major modification" for NO_x under the PSD program and the Furnace Expansion Project constituted a "major modification" for NO_x and SO₂ under the PSD and NNSR programs. A review of the Colorado Department of Public Health and Environment (CDPHE) records and Respondent's Responses, did not reveal any evidence that Respondent applied for a PSD permit for NO_x or SO₂ or a NNSR permit for PM-10 prior to these major modifications or at any time prior to the date of this Notice of Violation.

44. On November 7, 1994, Respondent applied for a "synthetic minor" NSR permit modification to cover the Furnace Expansion Project. The application used proposed emission reductions of NO_x (by installation of oxygen-enriched air staging (OEAS) technology for the three furnaces) and existing emission reductions of SO₂ (by historic raw material changes) to calculate a less than "significant net emissions increase" for the project. On June 29, 1995, CDPHE issued the "synthetic minor" NSR permit modification largely based on Respondent's representations made in its application. However, according to Respondent's Responses to EPA's Information Requests, Respondent only installed and temporarily operated the proposed combustion NO_x controls on Furnace A before discontinuing any NO_x controls on that furnace. Additionally, Respondent never added NO_x controls on Furnace B that would have offset expected NO_x emission increases from the permitted increase in production, as represented in the permit application. Furthermore, Respondent's Responses to EPA's Information Requests revealed that the maximum amount of SO₂ reduction in the period contemporaneous to the furnace expansion project that could be considered creditable was not sufficient to offset the permitted SO₂ increases. The result was a "significant net emission increase" in NO_x and SO₂.

NOTICE AND FINDINGS OF VIOLATION

45. Pursuant to the Colorado SIP and 40 C.F.R. § 52.21(r), any owner or operator who constructs or operates a source or modification, without obtaining a permit, will be subject to an appropriate enforcement action. The Furnace Expansion Project conducted by Respondent caused a "significant net emissions increase" of NO_x and SO₂, and the 1991 modification caused a "significant net emissions increase" of NO_x, resulting in each being a "major modification" as defined in the Colorado SIP and 40 C.F.R. § 52.21(b)(2)(i). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section I.B.2 (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part A, Section I.B.35.B (Colorado SIP 110(h) Compilation as of 11/15/1998).

46. With respect to the modifications outlined in paragraphs 41 - 42, Respondent failed to obtain a PSD permit or undergo PSD review, prior to commencing construction, and failed to apply BACT and conduct an air modeling analysis, in violation of Section 165(a)(1) of the Act, 42 U.S.C. § 7475(a)(1), 40 C.F.R. § 52.21(i) and (j) through (r), and the Colorado SIP, Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Sections I.A, III.A.1, IV.D.3.a and

³ Respondent at times has referred to Furnaces A, B and C, as Furnaces 1, 2 and 3, respectively.

IV.D.3.a.i-vi (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Sections I.A and III.A.1 & Part B, Sections IV.D.3.a. and IV.D.3.a.i-vi (Colorado SIP 110(h) Compilation as of 11/15/1998).

47. As stated in Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a, for any new “major stationary source” or “major modification”, the applicant must provide information outlined in that section for a nonattainment area permit. The Denver Metropolitan area was classified as nonattainment for PM-10 during the Furnace Expansion Project. Pursuant to Colorado Air Quality Control Commission Regulation No.3, 5 CCR 1001-5, Part A, Section I.B.35.B.a, the NO_x and SO₂ “significant net emission increases” also constitute a “significant net emission increase” for PM-10. With respect to the modifications outlined in paragraph 42, Respondent failed to obtain a NNSR permit prior to commencing construction, and failed to apply LAER, obtain offsets, and comply with the other requirements in Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a, in violation of Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a. (Colorado SIP 110(h) Compilation as of 11/15/1995). Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Part B, Section IV.D.2.a (Colorado SIP 110(h) Compilation as of 11/15/1998).

48. The violations noted in paragraphs 46 – 47 occurred from at least the start date of the construction of the modifications and continue until the appropriate permits are obtained, the necessary pollution control equipment is installed and operated, and Respondent establishes continuous compliance with the above-cited requirements.

49. It is a violation to operate each affected source without BACT controls for NO_x and SO₂ every day of such operation. It is a violation to operate each affected source without achieving LAER for NO_x and SO₂, obtaining necessary offsets, and complying with the other requirements of Colorado Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, Section IV.D.2.a, every day of such operation.

50. Respondent is in violation of the Title V permitting requirements because it failed and continues to fail to submit a timely and complete application for a Title V operating permit for the modified Facility, including updating its existing application to include all applicable requirements, including the requirement to meet BACT limits and LAER for a modified source.

ENFORCEMENT

51. Section 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that at any time after the expiration of thirty (30) days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the Act, SIP or permit, and/or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation that occurred through January 30, 1997, no more than \$27,500 per day for each violation that occurred after January 30, 1997 through March 15, 2004, no more than \$32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009, and no more than \$37,500 per day for each violation that occurred after January 12, 2009. Section 113(c) of the Act, 42 U.S.C.

§ 7413(c), provides that criminal sanctions may also be imposed to redress knowing violations of the Act. Section 306 of the Act, 42 U.S.C. § 7606, allows that any facility found in violation of the Act may be barred from federal grants, loans, or contracts.

OPPORTUNITY FOR CONFERENCE

52. Respondent may, upon request, confer with EPA. The conference will enable Respondent to present evidence bearing on the findings of violations, on the nature of the violations, and on any efforts Respondent may have taken or proposes to take to achieve compliance. Respondent has the right to be represented by counsel. A request for a conference must be made within ten (10) calendar days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

Sheldon H. Muller (Mail Code 8ENF-L)
Senior Enforcement Attorney
Office of Enforcement, Compliance and
Environmental Justice
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
muller.sheldon@epa.gov
303-312-6916

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

EFFECTIVE DATE

53. This NOV shall be effective immediately upon issuance.

Date Issued: February 1 ²⁰¹² _{2011.}



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

cc: Will Allison, Director
Air Pollution Control Division
Colorado Department of Public Health and Environment

Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

IN THE MATTER OF: ROCKY MOUNTAIN BOTTLE, LLC
DOCKET NUMBER: DOCKET No. CAA-08-2012-0002

CERTIFICATE OF SERVICE

On this date, the undersigned hereby certifies that the original and one true and correct copy of the **NOTICE OF VIOLATION, DOCKET No. CAA-08-2012-0002** was hand-carried to the Regional Hearing Clerk:

Tina Artemis, Region 8 Hearing Clerk
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

That a copy of the **NOTICE OF VIOLATION, DOCKET No. CAA-08-2012-0002** was sent via **CERTIFIED MAIL/RETURN RECEIPT # 7009 3410 0000 2592 0486** along with cover letter to:

John Kester
Vice President and Plant Manager
Rocky Mountain Bottle Company, LLC
10619 West 50th Avenue
RR836
Wheat Ridge, CO 80033

And that a copy the **NOTICE OF VIOLATION, DOCKET No. CAA-08-2012-0002** along with copy of cover letter was sent by first class mail to:

Will Allison, Director
Air Pollution Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive south
Denver, CO 80246-1530

Date: February 1, 2012

By: 
Dayle De Arvil