

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0003
)	
J Shaw Industries LLC, d/b/a)	Proceeding to Assess a Civil Penalty
Kokomo Opalescent Glass)	Under Section 113(d) of the
Kokomo, Indiana,)	Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is J Shaw Industries LLC, d/b/a/ Kokomo Opalescent Glass, a corporation doing business in Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

National Emission Standards for Hazardous Air Pollutants

9. Under Section 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Glass Manufacturing Area Sources at 40 C.F.R. Part 63, Subpart SSSSSS (NESHAP 6S), which among other things, requires that the source obtain a Clean Air Act permit under 40 C.F.R. Part 70. NESHAP 6S is at 40 C.F.R. §§ 63.11448 through 63.11460.

10. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. §§ 63.11448 through 63.11460 by December 28, 2009.

11. NESHAP 6S applies to a continuously operated furnace that produces glass containing one or more glass manufacturing metal hazardous air pollutants (HAP) as raw materials at an annual rate of 45 megagrams per year (50 tons per year) or more.

12. 40 C.F.R. § 63.11448 states that NESHAP 6S applies to the owner and operator of a glass manufacturing facility that is an area source of HAP emissions and meets all of the criteria specified in 40 C.F.R. § 63.11448(a) through (c).

13. 40 C.F.R. § 63.11448(a) defines a glass manufacturing facility as a plant site that manufactures flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials, as defined in 40 C.F.R. § 63.11459, to produce molten glass and form the molten glass into sheets, containers, or other shapes.

14. 40 C.F.R. § 63.11448(b) defines an area source of HAP emissions as any stationary source or group of stationary sources within a contiguous area under common control that does not have the potential to emit any single HAP at a rate of 10 tons per year (tpy) or more and any combination of HAP at a rate of 25 tpy or more.

15. 40 C.F.R. § 63.11448(c) states that NESHAP 6S applies if your glass manufacturing facility uses one or more continuous furnaces to produce glass that contains compounds of one or more glass manufacturing metal HAP, as defined in 40 C.F.R. § 63.11459, as raw materials in a glass manufacturing batch formulation.

16. 40 C.F.R. § 63.11449 states that NESHAP 6S applies to each existing or new affected glass melting furnace that is located at a glass manufacturing facility and satisfies the requirements specified in paragraphs (a)(1) through (3) of this section as follows: (1) the furnace is a continuous furnace as defined in 40 C.F.R. § 63.11459; (2) the furnace is charged with compounds of one or more of the glass manufacturing metal HAP as raw materials; and (3) the furnace is used to produce glass, which contains one or more of the glass manufacturing metal HAP as raw materials, at a rate of at least 50 tpy.

17. 40 C.F.R. § 63.11459 defines “raw material” as minerals, such as silica sand, limestone, and dolomite; inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate); metal oxides and other metal-based compounds, such as lead oxide, chromium oxide, and sodium antimonate; metal ores, such as

chromite and pyrolusite; and other substances that are intentionally added to a glass manufacturing batch and melted in a glass melting furnace to produce glass. Metals that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials. Cullet and material that is recovered from a furnace control device for recycling into the glass formulation are not considered to be raw materials for the purposes of this subpart.

18. 40 C.F.R. § 63.11459 defines “glass manufacturing metal HAP” as an oxide or other compound of any of the following metals included in the list of urban HAP for Integrated Urban Air Toxics Strategy and for which Glass Manufacturing was listed as an area source category: arsenic, cadmium, chromium, lead, manganese, and nickel.

19. 40 C.F.R. § 63.11459 defines “continuous furnace” as a glass manufacturing furnace that operates continuously except during periods of maintenance, malfunction, control device installation, reconstruction, or rebuilding.

20. 40 C.F.R. § 63.11449(e) states that if you own or operate an area source subject to NESHAP 6S, you must obtain a permit under 40 C.F.R Part 70 or 40 C.F.R. Part 71.

Title V Requirements

21. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no person may operate a source subject to standards or regulations under 42 U.S.C. § 7412 (hazardous air pollutants) without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the CAA. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See* 57 Fed. Reg. 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the federal operating permit program on July 1, 1996. *See* 61 Fed. Reg. 34228; 40 C.F.R. Part 70.

22. Section 503 of the CAA, 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.

23. Section 504(a) of the CAA, 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 (SIP). 42 U.S.C. § 7661c(a).

24. 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* 326 IAC 2-7-2.

25. 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 CAA that implements the relevant requirements of the CAA, including revisions to that plan promulgated in part 52 of this chapter . . .”

26. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the CAA.

27. 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.

Indiana’s Title V Requirements

28. EPA promulgated interim approval of the Indiana Title V program on November 14, 1995. *See* 60 Fed. Reg. 57188 (effective on December 14, 1995). EPA fully approved the

Indiana Title V program on December 4, 2001. *See* 66 Fed. Reg. 62969 (effective on November 30, 2001). The Indiana regulations governing the Title V permit program are codified at 326 IAC 2-7 and are federally enforceable pursuant to Section 113(a)(3) of the CAA.

29. 326 IAC 2-7-2(a)(3) provides that any source, including an area source, subject to a standard or other requirement under Section 112 of the CAA, is required to have a Title V permit.

30. 326 IAC 2-7-3 provides that it is unlawful to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

31. 326 IAC 2-7-5 provides that each Title V permit must include, among other things, enforceable emission limitations and standards as are necessary to assure compliance with applicable requirements of the CAA and the requirements of the applicable SIP.

32. 326 IAC 2-7-4 requires that a source submit a complete permit application which, among other things, identifies all applicable requirements and certifies compliance with all applicable requirements.

33. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$51,796 per day of violation up to a total of \$414,364 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

34. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

35. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

36. KOG is a corporation authorized to do business in the State of Indiana, and is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

37. At all times relevant to this action, KOG owned and operated emissions units at its glass manufacturing facility at 1310 South Market Street, Kokomo, Indiana (Kokomo Plant).

38. Currently, KOG owns and operates continuously fired natural gas fueled glass melting furnaces at the Kokomo Plant.

39. Based on its raw material usage data, KOG does not have the potential to emit more than 10 tons per year or more of any single HAP, or more than 25 tons per year or more of any combination of HAP.

40. KOG did not have any add-on emissions control devices associated with the emissions from its 12-pot glass melting furnace at the Kokomo Plant.

41. KOG is operating the Kokomo Site under an Indiana Registration Permit.

42. By no later than August 11, 2021, Respondent completed its replacement of the original 12-pot furnace with five natural gas-fired glass melting furnaces (day tank furnaces) to produce colored glass, and installed air emissions controls to comply with NESHAP 6S. KOG maintains two additional day tank furnaces that do not use glass manufacturing metal HAPs in its raw material charge.

43. On May 12, 2022, KOG conducted performance testing demonstrating compliance with NESHAP 6S's particulate matter emissions control requirements for the five day tank furnaces.

44. EPA alleges KOG violated NESHAP 6S because it failed to: comply with the provisions of NESHAP 6S until after it installed the five new day tanks; install certain emissions control equipment; conduct required performance testing to demonstrate compliance with NESHAP 6S's emissions limitations; perform required monitoring any time the affected furnace is producing glass that is charged with one or more of the glass manufacturing metal HAP; and is operating the Kokomo plant without a Title V permit as required by 40 C.F.R. § 63.11449(e).

45. EPA alleges KOG is in violation of the Title V permitting requirements at Sections 502(a) and 503 of the CAA, 40 C.F.R. Part 70, and the Indiana permit rules at 326 IAC 2 because it has failed and continues to fail to submit a timely and complete application for a Title V operating permit.

Civil Penalty

46. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and any other factors as justice may require, Complainant has determined that an appropriate civil penalty to settle this action is \$25,000. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,000 civil penalty by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

47. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Mary McAuliffe
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
mcauliffe.mary@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

48. This civil penalty is not deductible for federal tax purposes.

49. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

50. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

51. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and Joel.Bowers@btlaw.com and

jshaw@kog.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

52. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

53. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

54. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 52, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

55. By no later than 12 months of the Effective Date of this Order, in accordance with Administrative Consent Order EPA-5-23-113(a)-IN-01, KOG must achieve, demonstrate and maintain compliance with the 6S NESHAP at its Kokomo, Indiana facility.

56. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

57. The terms of this CAFO bind Respondent, its successors and assigns.

58. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

59. Each party agrees to bear its own costs and attorney's fees in this action.

60. This CAFO constitutes the entire agreement between the parties.

J Shaw Industries LLC, d/b/a/ Kokomo Opalescent Glass, Respondent

11-23-2022
Date


Jeffrey D. Shaw, CEO
J Shaw Industries LLC

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.12.06
14:53:13 -06'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Kokomo Opalescent Glass
Docket No. CAA-05-2023-0003

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2022.12.12
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Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5