UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR - 8 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard Hamilton Elliott
President and Registered Agent
Kokomo Opalescent Glass Company Inc
5399 Sugar Mill Rd.
Russiaville, Indiana 46979-0000

Re: Finding of Violation
Kokomo Opalescent Glass Company Inc
Kokomo, Indiana

Dear Mr. Elliot:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Kokomo Opalescent Glass Company Inc (KOG or you) under Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3). EPA finds that KOG has violated the National Emission Standards for Hazardous Air Pollutants (NESHAP) and has failed to apply for and obtain a Title V operating permit at its Kokomo, Indiana facility.

Section 113 of the Clean Air Act gives EPA several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

EPA is offering you an opportunity to confer about the violations alleged in the FOV. The conference will give KOG an opportunity to present information on the specific findings in the FOV, any efforts KOG has taken to comply, and the steps KOG will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Daniel Schaufelberger. You may call him at (312) 886-6814 to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,

George T. Czerniak
Director
Air and Radiation Division

Enclosure

cc: Phil Perry, Chief, Air Compliance Branch
Indiana Department of Environmental Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Kokomo Opalescent Glass Company Inc Kokomo, Indiana	)	
	)	**FINDING OF VIOLATION**
	)	
Proceedings Pursuant to the Clean Air Act 42 U.S.C. §§ 7401 *et seq.*	)	**EPA-5-16-IN-06**

FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) finds that Kokomo Opalescent Glass Company Inc (KOG) is violating Sections 112, 502, and 503 of the Clean Air Act (CAA), 42 U.S.C. §§ 7412, 7661a, and 7661b. Specifically, KOG is violating the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Glass Manufacturing Area Sources at 40 C.F.R. Part 63, Subpart SSSSSS, as well as federal and State requirements for its failure to apply for and obtain a Title V operating permit. The relevant statutory and regulatory background, factual background, finding of violations, and environmental impact of these violations are set forth in detail below.

EPA issues this Finding of Violation (FOV) pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3). The authority to issue this FOV has been delegated to the Regional Administrator of EPA Region 5 and re-delegated to the Director of the Air and Radiation Division, Region 5.

Statutory and Regulatory Authority

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

National Emission Standards for Hazardous Air Pollutants

2. Section 112 of the CAA, 42 U.S.C § 7412, requires the EPA to promulgate a list of all categories and subcategories of new and existing "major sources" and "area sources" of hazardous air pollutants (HAPs), and establish emissions standards for the categories and subcategories. These emission standards are known as NESHAPs. The EPA codified these standards at 40 C.F.R. Parts 61 and 63.

3. 40 C.F.R. Part 61, Subpart A, contains the general provisions for the NESHAPs.

4. "Major source" is defined as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants." 42 U.S.C § 7412(a)(1).

5. "Area source" is defined as "any stationary source of hazardous air pollutants that is not a major source." 42 U.S.C § 7412(a)(2).

6. "Hazardous air pollutant" is defined as "any air pollutant listed in or pursuant to" Section 112(b) of the CAA. 42 U.S.C § 7412(a)(6).

7. Section 112(i)(3) of the CAA, 42 U.S.C § 7412(i)(3), prohibits any person subject to a NESHAP from operating a source in violation of a NESHAP after its effective date. *See also* 40 C.F.R. §§ 61.05 and 63.4.

8. 40 C.F.R. § 63.6(e)(1)(i) states in part, "at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions."

9. Pursuant to Section 112 of the CAA, the EPA promulgated the NESHAP for Glass Manufacturing Area Sources at 40 C.F.R. Part 63, Subpart SSSSSS, 40 C.F.R. §§ 63.11448 – 63.11461, on December 26, 2007. 72 Fed. Reg. 73201.

The NESHAP for Glass Manufacturing Area Sources

10. 40 C.F.R. § 63.11448 states that the NESHAP for Glass Manufacturing Area Sources 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).

11. 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.

12. 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 tpy or more and any combination of HAP at a rate of 25 tpy or more.

13. 40 C.F.R. § 63.11448(c) states that 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.

14. 40 C.F.R. § 63.11449 states that the NESHAP for Glass Manufacturing Area Sources 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.

15. 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.

16. 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.

17. 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.

18. 40 C.F.R. § 63.11449(e) states that if you own or operate an area source subject to 40 C.F.R. Part 63, Subpart SSSSSS, you must obtain a permit under 40 C.F.R Part 70 or 40 C.F.R. Part 71.

Title V Requirements

19. 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.

20. 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.

21. 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. 42 U.S.C. § 7661c(a).

22. 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.

23. 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 . . ."

24. 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.

25. 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

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

Findings of Fact

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

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

33. KOG owns and operates a continuously fired natural gas fueled glass melting furnace at the Kokomo Plant.

34. On March 7, 2016, EPA Region 5 conducted a CAA compliance inspection at the Kokomo Plant.

35. The Kokomo Plant melts a mixture of raw materials at the glass melting furnace to produce colored sheet glass and glass blocks.

36. During the March 2016 inspection, KOG provided EPA with annual glass furnace raw material usage information showing that the Kokomo Plant uses compounds of cadmium, chromium, manganese, arsenic, and selenium as coloring agents in the furnace glass melt.

37. The throughput capacity of the glass melting furnace is 596 pounds of glass per hour. This hourly melting capacity translates to an annual melting capability of 2,610 tons per year.

38. Based on the provided raw material usage data, KOG does not have the potential to emit any single HAP at a rate of 10 tons per year or more and any combination of HAP at a rate of 25 tons per year or more.

39. There are no add-on air pollution emissions control devices associated with the emissions from glass melting furnace at the Kokomo Plant.

40. The Kokomo Plant currently operates under an Indiana Registration permit.

Violations

41. KOG violated and continues to violate the NESHAP at 40 C.F.R. Part 63, Subpart SSSSSS because it failed to comply with any of the provisions of the Subpart.

42. 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, and is operating the Kokomo plant without a Title V permit as required by 40 C.F.R. § 63.11449(e).

Environmental Impact of Violations

43. KOG's violations of the NESHAP have resulted in elevated emissions of cadmium, chromium, manganese, arsenic, and selenium.

44. Acute human exposure to cadmium can produce health effects such as bronchial and pulmonary irritation. Chronic exposure health effects from long-term exposure to cadmium include kidney disease, bronchiolitis, emphysema, and lung cancer.

45. Acute human exposure to chromium compounds can produce shortness of breath, coughing, wheezing, gastrointestinal, and neurological effects. Chronic exposure health effects include perforations and ulcerations of the septum, bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects. Chromium VI has been established as a human carcinogen, resulting in increased risk of lung cancer.

46. Chronic exposure to manganese by inhalation in humans may result in central nervous system effects such as changes in visual reaction time, hand steadiness, and eye-hand coordination. Respiratory effects have also been noted in workers chronically exposed by inhalation.

47. Acute human exposure to arsenic compounds can produce gastrointestinal effects (nausea, diarrhea, abdominal pain), and central and peripheral nervous system disorders. Chronic inhalation exposure health effects include skin and mucous membrane irritation (dermatitis, conjunctivitis, pharyngitis, and rhinitis) and effects in the brain and nervous system.

48. Acute human exposure to selenium compounds can result in irritation of the mucous membranes in the nose and throat (coughing, nosebleeds, and dyspnea), gastrointestinal effects (vomiting and nausea), neurological effects (headaches and malaise), pulmonary edema, and eye irritation.

4/8/16
Date

George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Kathy Jones, certify that I sent Finding of Violation Number EPA-5-16-IN-06 by Certified Mail, Return Receipt Requested, to:

Richard Hamilton Elliott
President and Registered Agent
Kokomo Opalescent Glass Company Inc
5399 Sugar Mill Rd.
Russiaville, Indiana 46979-0000

I also certify that I sent a copy of the Finding of Violation Number EPA-5-16-IN-06 to:

Phil Perry, Chief, Air Compliance Branch
Indiana Department of Environmental Management
PPERRY@idem.IN.gov

On the 8 day of APRIL 2016.

Kathy Jones, Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7673 7791