



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 22 2011

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gordon Stewart, VP Engineering
Anchor Glass Container Corporation
Suite 2800
401 East Jackson Street
Tampa, Florida 33602

Re: Notice of Violation and Finding of Violation issued to Anchor Glass Container Corporation

Dear Mr. Stewart:

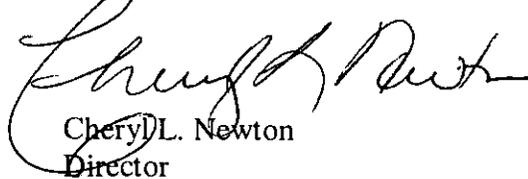
The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Anchor Glass Container Corporation (Anchor or you). This NOV/FOV is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

EPA has determined that Anchor is violating the Prevention of Significant Deterioration (PSD) requirements under Section 165 of the Act, 42 U.S.C. § 7475, the New Source Performance Standards (NSPS) under Section 111(e) of the Act, 42 U.S.C. § 7411(e), and the implementing regulations of Title V set forth at 40 C.F.R. Part 70 at its Winchester, Indiana facility.

EPA is offering you an opportunity to confer with us about the violations cited in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings in the NOV/FOV, and the steps you will take to bring the facilities into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You may contact Daniel Schaufelberger at (312) 886-6814 to request a conference. You should make the request for a conference no later than 10 calendar days after receipt of this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl L. Newton". The signature is fluid and cursive, with a large initial "C" and "N".

Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Phil Perry, Indiana Department of Environmental Management

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Anchor Glass Container Corporation
Winchester, Indiana

)
)
) Proceedings Pursuant to
) Section 113(a)(1) and (3) of the
) 42 U.S.C. § 7413(a)(1) and (3)
)
) **EPA-5-11-IN-05**
)
)
)

NOTICE OF VIOLATION AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Violation and Finding of Violation (NOV/FOV or Notice) to Anchor Glass Container Corporation (Anchor or you), for violations of the Clean Air Act (the Act), 42 U.S.C. §§ 7401 et seq., at its container glass manufacturing facility at 603 E. North Street, Winchester, Indiana.

This Notice is issued pursuant to Section 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3). The authority to issue this Notice has been delegated to the Regional Administrator of EPA Region 5 and redelegated to the Director, Air and Radiation Division.

STATUTORY AND REGULATORY BACKGROUND

1. The Act 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 populations. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

Prevention of Significant Deterioration

2. When the Act was passed in 1970, Congress exempted existing facilities, such as the glass manufacturing plant that is the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained, "[t]he statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979). Rather, when a grandfathered facility intends to perform modifications at the facility that may significantly increase emissions, the Act requires the company to install modern pollution control devices.

3. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, and their implementing regulations at 40 C.F.R. § 52.21 (collectively “the PSD Program”), establish specific pre-construction requirements applicable to the construction and modification of “major emitting facilities” located in areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards.
4. The PSD Program prohibits, among other things, a “major emitting facility” from constructing a “major modification” unless it has obtained a PSD permit that applies “Best Available Control Technology” (BACT) to control emissions from the proposed modified emissions unit, and conducts an analysis to determine the air quality impacts of the modification. Sections 165(a) and 169(2)(C) of the Act, 42 U.S.C. §§ 7475(a) and 7479(2)(C), and 40 C.F.R. § 52.21(i).
5. Pursuant to Section 169 of the Act, 42 U.S.C. § 7479(1), a “major emitting facility” is defined to include, among others, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated PSD pollutant.
6. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a state implementation plan (SIP) containing regulations implementing the PSD Program.
7. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations approved by EPA as part of its SIP, provided that the state PSD regulations are at least as stringent as those set forth at 40 C.F.R. § 51.166.
8. Pursuant to 40 C.F.R. § 52.21(a), if a state does not have PSD regulations that EPA has approved and incorporated into its SIP, EPA may incorporate the federal PSD regulations set forth at 40 C.F.R. § 52.21 into the SIP.
9. Pursuant to 40 C.F.R. § 52.23, any person failing to comply with an approved regulatory provision of a SIP is subject to an enforcement action under Section 113 of the Act, 42 U.S.C. § 7413.
10. On August 7, 1980, EPA disapproved Indiana’s proposed PSD program, and incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Indiana SIP. 45 Fed. Reg. 52676, 52741. On September 30, 1980, EPA delegated to the Indiana Department of Environmental Management (IDEM) certain authorities of the federal PSD program (40 C.F.R. § 52.21). 46 Fed. Reg. 9580, 9583. (January 19, 1981). On March 3, 2003, EPA conditionally approved Indiana’s PSD regulations at 326 IAC 2-2. 68 Fed. Reg. 9892 (effective April 2, 2003). On May 20, 2004, EPA provided final approval of 326 IAC Rule 2-2 into the Indiana SIP. 69 Fed. Reg. 29071 (effective July 19, 2004). On June 18, 2007, EPA partially approved revisions to 326 IAC 2-2 related to EPA’s NSR Reform regulations. 72 Fed. Reg. 33395 (effective July 18, 2007).

11. The regulations in effect during the project were the federal PSD regulations. The state PSD regulations were not included as part of Indiana's federally approved SIP at the time of the project identified in Paragraph 43.

12. 40 C.F.R. § 52.21(i) states that new or modified major stationary sources or major modifications, constructed in an area designated as attainment, are subject to the PSD provisions.

13. 40 C.F.R. § 52.21(b)(1)(i)(b) defines a "major stationary source" in an attainment area as any stationary source with the potential to emit, 250 tons per year or more of a regulated New Source Review (NSR) pollutant.

14. 40 C.F.R. § 52.21(b)(2)(i) defines 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.

15. 40 C.F.R. § 52.21(b)(23)(i) defines "net emissions increase" as the amount by which the sum of the increase in emissions from a physical change or change in the method of operation and any other contemporaneous increases or decreases in emissions exceeds zero.

16. In reference to SO₂ and NO_x, 40 C.F.R. § 52.21(b)(23)(i) defines "significant" with regard to a net emissions increase as a rate of emissions that would equal or exceed 40 tons per year.

17. In reference to PM/PM₁₀, 40 C.F.R. § 52.21(b)(23)(i) defines "significant" with regard to a net emissions increase as a rate of emissions that would equal or exceed 25 tons per year for PM and 15 tons per year for PM₁₀.

18. 40 C.F.R. § 52.21(j)(3) requires that owners or operators making a major modification apply BACT for each regulated pollutant for which the modification would result in a significant net emissions increase.

19. 40 C.F.R. § 52.21(b)(12) defines "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.

20. 40 C.F.R. § 52.21(k) requires that owners or operators of a proposed major modification demonstrate that allowable emission increases, in conjunction with all other applicable emission increases or reductions, will not cause or contribute to air pollution in violation of any ambient air quality standard or applicable maximum allowable increase over the baseline concentration in any area.

21. 40 C.F.R. § 52.21(r)(4) requires that when a particular source or modification becomes a major modification solely by virtue of a relaxation in any enforceable limitation on capacity of

the source or modification otherwise to emit a pollutant, then the requirements of PSD shall apply to the source or modification as though construction had not yet commenced on the source or modification.

NSPS Requirements

22. The NSPS for glass manufacturing plants at 40 C.F.R. Part 60, Subpart CC, applies to a glass melting furnace, the standard's affected facility, which commenced construction or modification after June 15, 1979. 40 C.F.R. § 60.290(a) and (b).

23. 40 C.F.R § 60.2 defines an "affected facility," with reference to a stationary source, as any apparatus to which a standard is applicable.

24. 40 C.F.R § 60.2 defines "modification" as any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility.

25. 40 C.F.R. § 60.292(a)(1) limits the atmospheric discharge of particulate matter from a glass furnace fired by a gaseous fuel to no more than 0.1 grams of particulate per kilogram of glass produced.

Title V Requirements

26. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. 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 71.

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. 42 U.S.C. § 7661c(a).

29. 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* 326 IAC 2-7-2.

30. 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 revisions to that plan promulgated in part 52 of this chapter . . .”

31. 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 Act. *See also* 326 IAC 2-7-2.

32. 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* 326 IAC 2-7-2.

33. 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* 326 IAC 2-7-2.

Indiana’s Title V Requirements

34. EPA granted 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 Act.

35. 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.

36. 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 Act and the requirements of the applicable SIP.

37. 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 AND CONCLUSIONS OF LAW

38. Anchor is a corporation authorized to do business in Indiana.
39. Anchor is a “person,” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
40. Anchor currently owns and operates emission units at its container glass manufacturing facility at 603 E. North Street, Winchester, Randolph County, Indiana (“Winchester plant”).
41. Anchor’s Winchester plant is a “major stationary source,” as that term is defined at 40 C.F.R. § 52.21(b)(1)(i)(b), in that it emits, or has the potential to emit several regulated NSR pollutants in excess of 250 tons per year.
42. Anchor’s Winchester plant is located in Randolph County, Indiana, which at all times relevant to this Notice was classified as attainment for SO₂, NO₂, and PM/PM₁₀.
43. In 1991, Anchor’s predecessor company, Anchor Glass Container Corporation and herein referred to as “Old Anchor,” completed construction and commenced operation of an expanded capacity No. 2 Furnace at the Winchester plant. Old Anchor failed to obtain the required permits, conduct any modeling, or undergo any other sort of pre-construction review for the physical changes.
44. In 1996, the Indiana Department of Environmental Management (IDEM) granted “Old Anchor” a glass production rate increase from 340 tons per day to 390 tons per day for the No. 2 Furnace.
45. According to Anchor’s 10-K 2000 Annual Report, Anchor was formed in 1997 to “acquire certain assets and assume certain liabilities of the former Anchor Glass Container Corporation (“Old Anchor”), which was subsequently liquidated in a proceeding under Chapter 11 of the United States Bankruptcy Code.” The Winchester plant was included in this purchase by Anchor.
46. After the modifications at the Winchester Plant, neither Old Anchor nor the current Anchor obtained the appropriate permits authorizing the modification and subsequently operated the units without installing and employing BACT to control emissions of SO₂, NO_x, and PM/PM₁₀. After the modifications at the Winchester plant, neither Old Anchor nor current Anchor submitted a permit application or amended a permit application under Title V or the CAA for the plant that contained all applicable requirements, including various requirements related to PSD.

NOTICE AND FINDING OF VIOLATIONS

Violations of PSD

47. The project described in Paragraph 43 caused a “significant net emissions increase” of SO₂, NO_x, and PM/PM₁₀ as defined in 40 C.F.R. § 52.21(b)(23)(i).
48. The project described in Paragraph 43 constituted a “major modification,” as that term is defined at 40 C.F.R. §52.21(i).
49. Old Anchor failed to apply for and/or obtain a PSD permit prior to beginning actual construction of the activities described in paragraph 43, and failed to install and operate BACT for SO₂, NO_x, and PM/PM₁₀ as required by 40 C.F.R. § 52.21(a)(2)(iii) for the modification described in Paragraph 43. Anchor expressly or impliedly agreed to assume liabilities associated with the major modifications at the Winchester plant. Thus Anchor is liable for this PSD claim as successor to Old Anchor.
50. Anchor is directly liable for violations of PSD requirements found at Section 165 of Act, 42 U.S.C. § 7445, for failing to apply for or obtain the PSD permit, for continuing to operate the modified facility without installing the BACT or going through PSD review, and for failing to install appropriate emissions control equipment in accordance with a BACT analysis.

Violations of NSPS

51. The project described in Paragraph 43 constituted a “modification,” as that term is defined at 40 C.F.R. § 60.2.
52. Anchor’s failure to comply with the Standards of Performance for Glass Manufacturing Plants as set forth at 40 C.F.R. Part 60, Subpart CC, after the project described in Paragraph 43, constitutes violations of 40 C.F.R. Part 60, Subpart CC, including, but not limited to, failure to comply with the PM emission limit at 40 C.F.R. § 60.292(a)(1).

Violations of the Title V Permit Program

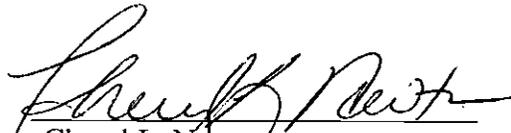
53. Anchor is in violation of the Title V permitting requirements at Section 503 of the Act and 40 C.F.R. Part 70 because it has failed and continues to fail to submit a timely and complete application for a Title V operating permit for the Winchester plant that: (i) includes information pertaining to the construction and operation of the project described in paragraph 43; (ii) identifies all applicable requirements including, but not limited to the requirement to apply, install and operate BACT for SO₂, NO_x, and PM/PM₁₀ and the requirement to comply with the NSPS for glass manufacturers; (iii) accurately certifies compliance with such requirements; and (iv) contains a compliance plan for all applicable requirements for which it is not in compliance.

ENFORCEMENT AUTHORITY

54. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the applicable SIP, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

55. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule promulgated under Title V of the Act, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

3/22/11
Date


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

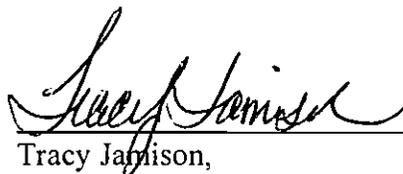
I, Tracy Jamison, certify that I sent a Notice of Violation and Finding of Violation, No. **EPA-5-11-IN-05** by Certified Mail, Return Receipt Requested, to:

Gordon Stewart, VP Engineering
Anchor Glass Container Corporation
Suite 2800
401 East Jackson Street
Tampa, Florida 33602

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first class mail to:

Phil Perry, Chief
Compliance and Enforcement Branch
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue, Room IGCN 1003
Indianapolis, Indiana 46206-6015

on the 23 day of MARCH, 2011.



Tracy Jamison,
Office Automation Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER 7009 1680 0000 7660 8602