IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff,	))	Civil Action No. [_____]
v.	))	Complaint
SAINT-GOBAIN CONTAINERS, INC. Defendant.	))	

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against Saint-Gobain Containers, Inc. (Saint-Gobain) pursuant to Section 113(b) of the Clean Air Act (the Act), 42 U.S.C. § 7413, seeking injunctive relief and civil penalties at 15 of Saint-Gobain's glass manufacturing plants for violations of Parts C and D of Title I of the Act, 42 U.S.C. §§ 7470-7492, 7501-7515, the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) provisions of the Act; and the federally-enforceable State Implementation Plans (SIPs) for California, Illinois, Indiana, Louisiana, Massachusetts, Missouri, New Jersey, North Carolina, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410, which incorporate and/or implement the above-listed federal requirements.

2. The 15 glass manufacturing plants at issue in this action are located in Madera, California; Dunkirk, Indiana; Dolton, Illinois; Lincoln, Illinois; Ruston,

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

Louisiana; Milford, Massachusetts; Pevely, Missouri; Carteret, New Jersey; Henderson, North Carolina; Wilson, North Carolina; Sapulpa, Oklahoma; Port Allegany, Pennsylvania; Waxahachie, Texas; Seattle, Washington; and Burlington, Wisconsin. Saint-Gobain constructed and/or modified certain of these glass manufacturing plants without first obtaining appropriate permits authorizing the construction and/or modification and subsequent operation of the plants; and failed to install and employ the best available control technology (BACT) or lowest achievable emissions rate (LAER) to control emissions of nitrogen oxides (NOx), sulfur dioxide (SO2) and particulate matter (PM) as the Act, the applicable federal regulations and the SIPs require.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because some of the violations which constitute the basis of this Complaint occurred in this District.

NOTICES

5. The United States provided notice of the violations alleged herein to

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

Saint-Gobain, and to each of the states and local air authorities where the Saint-Gobain glass manufacturing plants are located, pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

6. The 30-day period established in Section 113, 42 U.S.C. § 7413, between the notices of violation provided by the United States and the commencement of this civil action has elapsed.

THE DEFENDANT

7. Saint-Gobain is a Delaware corporation headquartered in Muncie, Indiana. Saint-Gobain is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

8. At certain times relevant to this Complaint, Saint-Gobain has owned and operated glass manufacturing plants at the following locations:

Burlington, Wisconsin

Carteret, New Jersey

Dolton, Illinois

Dunkirk, Indiana

Henderson, North Carolina

Lincoln, Illinois

Madera, California

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

Milford, Massachusetts

Pevely, Missouri

Port Allegany, Pennsylvania

Ruston, Louisiana

Sapulpa, Oklahoma

Seattle, Washington

Waxahachie, Texas

Wilson, North Carolina.

STATUTORY AND REGULATORY BACKGROUND

9. As set forth in Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(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 population.

The National Ambient Air Quality Standards

10. Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

associated with presence of the air pollutant in the ambient air. EPA has identified and promulgated primary and secondary NAAQS for SO_2, NO_X, and PM, among other pollutants, which are codified at 40 C.F.R. §§ 50.4, 50.5, 50.6, 50.7, 50.10, 50.11, & 50.13.

11. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is designated as "unclassifiable."

12. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS.

The Prevention of Significant Deterioration Requirements

13. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process.

14. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and implementing regulations (herein referred to as the "PSD regulations"), prohibit the construction, major modification, and subsequent operation of a major emitting facility in an area designated as attainment or unclassifiable unless a permit has been issued setting forth emission limitations for such facility which conform to the PSD requirements. 40 C.F.R. § 52.21(a)(2)(iii).

15. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines "major emitting facility" generally as a source with the potential to emit 250 tons per year (tpy) or more of any pollutant.

16. The PSD regulations define "major stationary source" as any stationary source, which emits or has the potential to emit 250 tpy per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(b).

17. The PSD regulations define "major modification" as any physical change in or change in the method of operation of a major stationary source that

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

would result in a significant net emission increase of any pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(2)(i).

18. "Significant," as pertinent to this Complaint, means an increase in emissions of the following pollutants: NO_x that would equal or exceed 40 tpy; SO_2 that would equal or exceed 40 tpy; and PM that would equal or exceed 15 tpy. 40 C.F.R. § 52.21(b)(23)(i).

19. "Net emissions increase" is defined as "the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions, as defined by 40 C.F.R. § 52.21(b)(21) 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, as defined by 40 C.F.R. § 52.21(b)(21), at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i).

20. The PSD regulations, 40 C.F.R. §§ 52.21(i) and (k), require the owner or operator to obtain a permit prior to construction of a major stationary source or of a major modification and, *inter alia*, to demonstrate that the construction or modification, taken together with other increases or decreases of air emissions, will not violate applicable air quality standards.

21. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

source performing a major modification in an attainment or an unclassifiable area shall install and operate best available control technology, as that term is defined at 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3), for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

22. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area.

23. As set forth in 40 C.F.R. § 52.21(n), the owner or operator of a proposed source or modification must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21.

24. Section 161 of the Act, 42 U.S.C. § 7471, requires SIPs to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

25. A state or regional air authority may comply with Section 161 of the Act, 42 U.S.C. § 7471, by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved by EPA as part of its SIP, which must be at least as stringent as the requirements set forth at 40 C.F.R. § 51.166. All of the states and regional

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

air authorities with jurisdiction over the glass manufacturing plants at issue in this matter have either delegated or approved PSD programs.

Nonattainment New Source Review

26. Sections 110(a)(2)(C) and (I) of the Act, 42 U.S.C. §§ 7410(a)(2)(C) & (I), require that each SIP contain a program meeting the requirements of Part D of the Act for the pre-construction review and permitting of new and modified stationary sources located in or near areas designated as "nonattainment" for a criteria pollutant pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d).

27. EPA regulations at 40 C.F.R. § 51.165 require that each SIP contain such a program for pre-construction review and permitting of new and modified sources in or near designated nonattainment areas.

28. As reflected in the relevant sections of 40 C.F.R. Part 52, each of the states at issue here has adopted such a program, and EPA has approved it into the relevant SIP. In each case, the approved program regulates through the permitting process both the construction and operation of new and modified stationary sources in or near designated nonattainment areas. In some cases the program requires the payment of emission fees in proportion to emission levels.

Enforcement Provisions

29. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

> Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may . . .
>
> * * *
>
> (C) bring a civil action in accordance with subsection (b) of this section.

30. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that "[e]xcept for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section . . . ."

31. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

temporary injunction and/or for civil penalties against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan, and other requirements of the Act.

GENERAL ALLEGATIONS

32. At all times relevant to this Complaint, Saint-Gobain owned and operated the glass manufacturing plants, which are identified in Paragraph 8.

33. At the plants, Saint-Gobain produces glass containers and bottles for beverages, food, and other uses.

34. Except for the Dunkirk plant, at all times relevant to this Complaint, Saint-Gobain's glass manufacturing plants identified in Paragraph 8 have been "major stationary sources" as defined by 40 C.F.R. § 52.21(b)(1)(i)(b).

35. EPA has conducted investigations of Saint-Gobain's glass manufacturing plants, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information obtained from Saint-Gobain concerning construction and operation of such plants. The United States alleges the following based on the results of EPA's investigation, information and belief.

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

FIRST CLAIM FOR RELIEF

(PSD Violations)

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. At various times, Saint-Gobain commenced construction or constructed major modifications, as defined in the Clean Air Act, at one or more of its plants. These major modifications included, but are not limited to: furnace rebuilds or construction of new furnaces at various plants listed in Paragraph 8. By way of example, from 1992 to 1994, at the Seattle plant, Saint-Gobain enlarged two of the furnaces, converted two of the furnaces from regenerative to oxyfuel, and converted one furnace from all electric to oxyfuel. Saint-Gobain also made additional major modifications to its plants beyond those described in this paragraph. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following pollutants: NO_X, SO_2 and/or PM.

38. From the time it performed major modification(s) to its glass manufacturing plants, Saint-Gobain has been in violation of Section 165(a) of the Act, 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. § 52.21, and the corresponding SIPs, by undertaking such major modification(s) and operating

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

its glass manufacturing plants without first obtaining a PSD permit as required by 40 C.F.R. § 52.21(a)(2)(iii)); and by failing to install and operate BACT for control of criteria pollutants as required by 40 C.F.R. § 52.21(j).

39. Unless restrained by an order of this Court, the violations of the Act alleged in this First Claim for Relief will continue.

40. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Saint-Gobain to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation between March 15, 2004, and January 12, 2009; and up to $37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

SECOND CLAIM FOR RELIEF

(Nonattainment New Source Review Violations)

41. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

42. At various times, Saint-Gobain commenced construction or

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

constructed major modifications, as defined in the Clean Air Act, at one or more of its plants. These major modifications included, but are not limited to: furnace rebuilds or construction of new furnaces at various plants listed in Paragraph 8. Saint-Gobain also made additional major modifications to its plants beyond those described in this paragraph. One or more of these major modifications occurred at plants located in a nonattainment area for SO_2, PM and/or ozone. These major modifications resulted in significant net emission increases of SO_2 and/or NO_x, as defined by the Clean Air Act, 42 U.S.C. §§ 7501-7515.

43. Saint-Gobain violated and continues to violate the Nonattainment NSR provisions of the Clean Air Act by, among other things, undertaking such major modifications and operating the facility after the modifications without obtaining a Nonattainment NSR permit as required by the applicable SIP. In addition, as required by 42 U.S.C. §§ 7501-7515, Saint-Gobain has not: (1) installed and operated LAER for control of SO_2 and NO_X; (2) obtained and operated with federally enforceable emission offsets at least as great as the modified source's emissions; (3) certified that all other major sources that they own or operate are in compliance with the Clean Air Act; and (4) demonstrated that the benefits of the modifications significantly outweigh the environmental and social costs imposed as a result of the modifications.

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

44. As such, Saint-Gobain has violated the Nonattainment NSR provisions of Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, that EPA has approved into the relevant SIPs pursuant to Sections 110(a)(2)(C) and (I) of the Act, 42 U.S.C. §§ 7410(a)(2)(C) & (I), and 40 C.F.R. § 51.165, by failing to comply with limits, terms and conditions in permits issued pursuant to such programs; by failing to apply for and obtain necessary permits prior to performing major modification and/or construction; and by failing to represent as necessary in its applications the emission level or air quality consequences of proposed construction or modification.

45. Unless restrained by an order of this Court, the violations of the Act alleged in this Second Claim for Relief will continue.

46. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Saint-Gobain to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation between March 15, 2004, and January 12, 2009; and up to $37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

PRAYER FOR RELIEF

WHEREFORE, the United States of America requests that this Court:

1. Permanently enjoin Saint-Gobain from operating the glass melting furnaces at the Saint-Gobain glass manufacturing plants, including the construction of future modifications, except in accordance with the Clean Air Act and applicable regulatory requirements;

2. Order Saint-Gobain to remedy its past violations by, among other things, requiring Saint-Gobain to install, as appropriate, the best available control technology, or such other emissions control technology required by law, on the glass melting furnaces at the Saint-Gobain glass manufacturing plants for each pollutant subject to regulation under the Clean Air Act;

3. Order Saint-Gobain to apply for permits that are in conformity with the requirements of the Clean Air Act and SIP requirements;

4. Assess a civil penalty against Saint-Gobain of up to $25,000 per day for each violation of the Act occurring prior to January 30, 1997, up to $27,500 per day for each violation of the Act occurring between January 30, 1997 and March 15, 2004, and up to $32,500 for each violation of the Act occurring between March 15, 2004 and January 12, 2009; and up to $37,500 for each violation occurring

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

after January 12, 2009;

5. Award Plaintiff its costs of this action; and,

6. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

IGNACIA MORENO
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

JAMES A. LOFTON
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044
Telephone: (202) 514-2445
Facsimile: (202) 514-0097
Email: jim.lofton@usdoj.gov

JEFFREY C. SULLIVAN
United States Attorney
Western District of Washington

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970

BRIAN C. KIPNIS
Assistant United States Attorney
Western District of Washington
5220 United States Courthouse
700 Stewart Street
Seattle, WA 98101-1671
Telephone: (206) 553-7970
Facsimile: (206) 553-4073
E-mail: brian.kipnis@usdoj.gov

Of Counsel:

Robert D. Fentress
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Mail Code 2242A
Washington, D.C. 20460
(202) 564-7023
fentress.robert@epa.gov

Juliane Matthews
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Mail Code: ORC-158
Seattle, Washington 98101
(206) 553-1169
matthews.juliane@epa.gov

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 STEWART STREET
SEATTLE, WASHINGTON 98101-1271
(206) 553-7970