



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

January 3, 2023

Sent electronically to: Nipesh.Shah@AnchorGlass.com

Mr. Nipesh Shah, CEO
Anchor Glass Container Corporation
3001 North Rocky Point Drive East
Suite 300
Tampa, Florida 33607

SUBJECT: Department of Environmental Protection v. Anchor Glass Container Corporation
OGC File No. 22-2096
Air Facility ID No. 0310005
Duval County


Dear Mr. Shah

Enclosed is a copy of the executed Consent Order to resolve Case Number 22-2096. The effective date of this Order is January 3, 2023, and all timeframes will be references from this date.

As a reminder, a Consent Order is a binding legal document and was voluntarily entered into by both parties.

Should you have any questions concerning the Consent Order, please contact Chris Azcuy, at Chris.Azcuy@FloridaDEP.gov, or by phone at (904) 256-1529. Your continued cooperation in the matter is appreciated.

Sincerely,


Thomas G. Kallemeyn
Assistant District Director

Enclosure: Executed Consent Order

ec: FDEP-OGC: Lea Crandall, Agency Clerk
FDEP-NED: Joni Petry, Chris Azcuy, Tori Rohde, Sarah Harris, Thomas Kallemeyn,
DEP_NED
Rachel Celiberti, Rachel.Celiberti@AnchorGlass.com
Anita Evenson, Anita.Evenson@AnchorGlass.com
Dennis Benjamin, Dennis.Benjamin@AnchorGlass.com



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
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Ron DeSantis
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November 16, 2022

Sent electronically to: Nipesh.Shah@AnchorGlass.com

Mr. Nipesh Shah, CEO
Anchor Glass Container Corporation
3001 North Rocky Point Drive East
Suite 300
Tampa, Florida 33607

SUBJECT: Department of Environmental Protection v. Anchor Glass Container Corporation
OGC File No. 22-2096
Air Facility ID No. 0310005
Duval County – Air Enforcement

Dear Mr. Shah:

The State of Florida Department of Environmental Protection (“Department”) finds that Anchor Glass Container Corporation (“Respondent”) operated Emission Unit 003, Glass Melting Furnace No. 3, at the Jacksonville Plant 07 in such a manner that exceeded the unit’s Opacity limit (corresponding to the 99th upper confidence level as a surrogate emission limit for Particulate Matter) on three separate instances. Glass Melting Furnace No. 3 exceeded the Opacity limit for 27 hours between March 16 and March 17, 2022; for 26 hours between April 16 and April 17, 2022; and for 16 hours between August 24 and August 25, 2022. These permit limit exceedances are considered excess emissions and are in violation of Permit Condition A.10 of Title V Air Operation Permit No. 0310005-025-AV and Rule 62-4.160(1), Florida Administrative Code (“Fla. Admin. Code”).

Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violations. These actions have since been completed. However, due to the nature of the violations, the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department’s Offer

Based on the violations described above, the Department is seeking \$22,500.00 in civil penalties and \$500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$23,000.00. The civil penalties are apportioned as follows for each separate instance: \$1,500.00 for exceeding the air emission standard for Opacity (surrogate for Particulate Matter), in violation of Permit Condition A.10. of Title V Air Operation Permit No. 0310005-025-AV, with a \$4,500.00 add-on since the facility is a major source of pollution for

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Particulate Matter and an \$1,500.00 add-on since the excess emissions were greater than 150% of the permitted limit.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Department at the Northeast District Office at 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256, within 30 days of the date this Consent Order was issued. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), Florida Statutes ("Fla. Stat."), and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, Fla. Stat., and the attached Notice of Rights.

By accepting this offer you, Nipesh Shah:

- (1) Certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) Acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this offer, once final;
- (3) Acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, Fla. Stat.; and
- (4) Acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violations referenced above.

Respondent's Performance

After signing and returning this document to the Department,

- (1) Respondent must pay \$23,000.00 full **within 30 days** of the effective date of this order.
- (2) Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order is final and effective filed with the Clerk of the Department before ability to make online payment is available.

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- (3) In lieu of making cash payment of \$22,500.00 in civil penalties as set forth in the “The Department’s Offer” above, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project and may not be a corrective action requirement of the Order or otherwise required by law. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$33,750.00. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of the Consent Order.
- (4) If Respondent elects to implement an in-kind project as provided in Paragraph 3, then Respondent shall comply with all the requirements and time frames in Exhibit A entitled In-Kind Projects.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, Fla. Stat.


Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, Fla. Stat. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

Electronic signatures or other versions of the parties’ signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

Please be aware that if the Respondent declines to respond to the Department’s offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Chris Azcuy, at (904) 256-1529, or via email at Chris.Azcuy@FloridaDEP.gov.

Sincerely,



James R. Maher, P.E.
Assistant Director

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FOR THE RESPONDENT:

I, Nipesh Shah (Nipesh Shah), **HEREBY ACCEPT THE
TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By:  84E3A68BE123455... Date: December 8, 2022 | 3:22 PM PST
Nipesh Shah

Title: Chief Executive Officer, Anchor Glass Container Corporation

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 3rd day of January 2023, in Duval County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



 Gregory J. Strong
District Director

Filed, on this date, pursuant to Section 120.52, Fla. Stat., with the designated Department Clerk,
receipt of which is hereby acknowledged.



Clerk

January 3, 2023

Attachments: Notice of Rights
Exhibit A – In-Kind Project

Final clerked copy furnished to:

Lea Crandall, Agency Clerk (Lea.Crandall@FloridaDEP.gov) [executed copy only]

FDEP-NED: Joni Petry, Chris Azcuy, Tori Rohde, Sarah Harris, DEP_NED

Rachel Celiberti, Rachel.Celiberti@AnchorGlass.com

Anita Evenson, Anita.Evenson@AnchorGlass.com

Dennis Benjamin, Dennis.Benjamin@AnchorGlass.com

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

Exhibit A
In-Kind Projects

I. An in-kind project

1. Within 60 days of the effective date of this Consent Order, Respondent shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

2. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipt of written notice.

3. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines, the Department shall notify the Respondent in writing of the reason(s) for it not approving the proposal. Respondent shall correct and redress all of the matters or deficiencies identified by the Department and submit a new or revised proposal to the Department, by certified mail, within 30 days of receipt of the Department's notice. If the new or revised proposal is not approved by the Department, Respondent shall submit payment of the administrative penalties set out in the "Department's Offer" above, within 30 days of receipt of the Department's notice rejecting the proposal.

4. Within 120 days of the effective date of this Consent Order, Respondent shall obtain approval for an in-kind project from the Department. If the Department does not approve an in-kind project proposal submitted by Respondent within 120 days of the effective date of this Consent Order, then Respondent shall submit payment of the administrative penalties as set out in the "Department's Offer" above, within 30 days of receipt of the Department's notice rejecting the proposal.

5. Respondent shall complete the in-kind project, as approved by the Department, within 180 days of obtaining Department approval of Respondent's in-kind proposal or in accordance with the schedule submitted pursuant to Paragraph (1) of this Exhibit and approved by the Department.

6. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) upon the completion of the in-kind project. At no time during the implementation of the project or following the completion of the project, shall Respondent post any sign(s) at the project site or otherwise disseminate information that may infer any other reason for the project other than resulting from a Department enforcement action.

7. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project, or otherwise fails to comply with any provisions of the Department-approved proposal, this Consent Order, or Paragraphs 1 through 9 of this Exhibit, Respondent shall forfeit the in-kind penalty project option, and Respondent shall submit the entire amount of administrative penalties set out in the "Department's Offer" above within 30 days of notice by the Department. Should the in-kind penalty project be terminated for any reason and Respondent timely remits the \$22,500.00 penalty, no additional penalties shall be assessed for failure to complete the requirements of this Exhibit.

8. Within 15 days of completing the approved in-kind project, Respondent shall notify the Department in writing, by certified mail, of the project's completion, and submit documentation, verifying that the project was completed in accordance with the approved proposal and detailing the actual costs incurred to complete the project. Actual costs of the project shall not include costs incurred in developing the proposal or obtaining approval from the Department for the project.

9. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project, the Department shall notify Respondent, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all of the matters or deficiencies identified by the Department and submit a new or revised notification of completion to the Department at issue and submit, by certified mail, within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and Respondent shall submit the entire amount of the administrative penalties assessed in the

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“Department’s Offer” above within 30 days of notice from the Department. If the in-kind penalty project is terminated and Respondent timely remits the \$22,500.00, no additional penalties shall be assessed for failure to complete the requirements of this Exhibit.