

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	COMPLAINT
)	
v.)	Civil Action No. 1:21-cv-40
)	
PILKINGTON NORTH AMERICA, INC.,)	
)	
Defendant.)	
_____)	

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 Pilkington North America, Inc. (“PNA”) pursuant to Sections 113(b) and 167 of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §§ 7413(b) and 7477, seeking injunctive relief for PNA’s violations of the Act at its glass manufacturing facility in Laurinburg, North Carolina. PNA has violated Part C of Title I of the CAA, 42 U.S.C. §§ 7470–7492, related to the Prevention of Significant Deterioration of Air Quality requirements; Title V of the CAA, 42 U.S.C. §§ 7661–7661f, related to operating permits; and Section 110 of the CAA, 42 U.S.C. § 7410, related to the federally-enforceable State Implementation Plan for North Carolina (“the

North Carolina SIP”), which incorporates and implements the above-listed federal requirements.

2. PNA constructed and modified Furnace No. 1, also known as “emission source ES-01,” at its Laurinburg glass manufacturing facility without first obtaining appropriate permits authorizing the construction, modification, and subsequent operation of the furnace. Further, PNA failed to install and employ the best available control technology (“BACT”) to control emissions of nitrogen oxides (“NO_x”), sulfur dioxide (“SO₂”), and particulate matter (“PM”), as required by the CAA, the applicable federal regulations, and the North Carolina SIP.

JURISDICTION AND VENUE

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

4. Venue is proper in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a).

NOTICES

5. The United States provided notice of the alleged violations to PNA, and to the State of North Carolina, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

6. The 30-day period established in Section 113 of the CAA, 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. PNA is a Delaware corporation headquartered in Toledo, Ohio. PNA owns and operates a glass manufacturing facility located on U.S. Highway 74 East in Laurinburg, North Carolina (“the Laurinburg Facility”).

STATUTORY AND REGULATORY BACKGROUND

8. Congress enacted the CAA to, *inter alia*, “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

National Ambient Air Quality Standards

9. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of the EPA to promulgate a list of each air pollutant, emissions of which may reasonably be anticipated to endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. EPA has identified, *inter alia*, NO_x, SO₂, and PM as pollutants meeting this criteria (“criteria pollutants”). 40 C.F.R. §§ 50.4–50.7, 50.11, 50.13, and 50.17–50.18.

10. Section 109 of the CAA, 42 U.S.C. § 7409, requires the Administrator of the EPA to promulgate regulations that establish primary and secondary national ambient air quality standards (“NAAQS”) for criteria pollutants. The primary NAAQS are to protect the public health with an adequate margin of safety, and the secondary NAAQS are to protect the public welfare from any known or anticipated adverse effects associated

with the presence of the air pollutant in the ambient air. 42 U.S.C. § 7409(b); 40 C.F.R. § 50.2(b).

11. The EPA has promulgated primary and secondary NAAQS for NO_x, SO₂, and PM. 40 C.F.R. §§ 50.4–50.7, 50.11, 50.13, and 50.17–50.18.

12. Section 107(d) of the CAA, 42 U.S.C. § 7407(d), requires each state to designate those areas or districts within its boundaries where the air quality for each criteria pollutant attains the NAAQS, fails to attain the NAAQS, or is unclassifiable due to insufficient data. Areas that meet the NAAQS for a particular pollutant are designated “attainment areas” for that pollutant, while areas that do not meet the NAAQS for a particular pollutant are designated “non-attainment areas.”

The Prevention of Significant Deterioration Requirements

13. Part C of Title I of the CAA, 42 U.S.C. §§ 7470–7492, sets forth requirements for the prevention of significant deterioration (“PSD”) of air quality in areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with preserving clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of the consequences of that decision and after public participation in the decision-making process. These provisions are referred to herein as the “PSD program.”

14. As part of the PSD program, Section 165(a) of the CAA, 42 U.S.C. § 7475(a), prohibits the “construction” and operation of a “major emitting facility” in an area designated as attainment or unclassifiable without first receiving a permit that comports with the requirements of Section 165, including the requirement that the facility install BACT for each pollutant emitted from the facility that is subject to regulation under the CAA.

15. Section 169(2)(C) of the CAA, 42 U.S.C. § 7479(2)(C), defines “construction” to include “modification” (as defined in Section 111(a) of the CAA, 42 U.S.C. § 7411(a)). Section 111(a) of the CAA, 42 U.S.C. § 7411(a), defines modification as “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”

16. Section 169(1) of the CAA, 42 U.S.C. § 7479(1), defines “major emitting facility” to include any source with the potential to emit 250 tons per year or more of any pollutant.

17. Section 169(3) of the CAA, 42 U.S.C. § 7479(3), defines BACT, in pertinent part, as “an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs,

determines is achievable for such facility through application of production processes and available methods, systems, and techniques In no event shall application of [BACT] result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 . . . of this title.”

18. Section 110(j) of the CAA, 42 U.S.C. § 7410(j), which governs permits issued under Title I of the CAA, states that “the owner or operator of each . . . modified stationary source which is required to obtain such a permit must show . . . that the technological system of continuous emission reduction which is to be used will enable such source to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.”

19. Section 165(a)(3) of the CAA, 42 U.S.C. § 7475(a)(3), allows issuance of a PSD permit only if “the owner or operator of [a] facility demonstrates, as required pursuant to section 7410(j) of this title, that emissions from construction or operation of such facility” will not compromise compliance with applicable air quality standards.

20. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to the EPA for approval a State Implementation Plan (“SIP”) that includes PSD regulations found under Sections 161–165 of the CAA, 42 U.S.C. §§ 7471–7475. Section 161 of the CAA, 42 U.S.C. § 7471, requires that each applicable SIP contain a PSD program.

21. Section 302(q) of the CAA, 42 U.S.C. § 7602(q), defines an “applicable SIP” as the implementation plan, or most recent revision of the implementation plan, which the EPA has approved under Section 110 of the CAA, 42 U.S.C. § 7410, or promulgated under Section 110(c) of the CAA, 42 U.S.C. § 7410(c), and which implements the relevant requirements of the CAA. EPA-approved SIP requirements are federally enforceable under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23.

22. A state may comply with Section 161 of the CAA, 42 U.S.C. § 7471, by having its own PSD regulations approved by the EPA as part of its SIP, in which case the state’s regulations must be at least as stringent as those found under 40 C.F.R. § 51.166. If a state does not have an EPA-approved PSD program incorporated into its SIP, federal PSD regulations found under 40 C.F.R. § 52.21 are incorporated by reference into the state’s SIP. 40 C.F.R. § 52.21(a).

23. North Carolina’s PSD program is part of the North Carolina Administrative Code at Title 15A, Chapter 2, Subchapter D, Section .0530. The EPA approved North Carolina’s PSD program into the North Carolina SIP in 1982. *See* 47 Fed. Reg. 7836 (Feb. 23, 1982). Since then, the EPA has approved various amendments and revisions to the North Carolina SIP, including to 15A N.C. Admin. Code 2D.0530. *See, e.g.*, 61 Fed. Reg. 5689 (Feb. 14, 1996).

24. At all times relevant to this complaint, the North Carolina PSD program

incorporated certain sections of the federal PSD regulations found under 40 C.F.R. § 51.166. *See* 15A N.C. Admin. Code 2D.0530 (1995) (incorporating the June 1993 version of 40 C.F.R. § 51.166); *see also* 60 Fed. Reg. 51,923 (Oct. 4, 1995) (approving the 1995 changes to North Carolina’s PSD program). The citations below refer to the versions of 15A N.C. Admin. Code 2D.0530 and 40 C.F.R. § 51.166 in effect and approved by the EPA at the time each alleged violation began.

25. At all times relevant to this complaint, the PSD provisions in the applicable North Carolina SIP prohibited beginning actual construction or operation of a new major stationary source or a major modification to an existing major stationary source in an area designated as attainment or unclassifiable without first obtaining a permit and applying BACT. *See* 15A N.C. Admin. Code 2D.0530(g), (h) (requiring, *inter alia*, that new sources and major modifications comply with 40 C.F.R. § 51.166(i) and 15A N.C. Admin. Code 2Q.0300); *see also* 40 C.F.R. § 51.166(i)(1) (stating that no major stationary source or major modification shall begin actual construction without satisfying BACT requirements found in subparagraphs (j) to (r)); 15A N.C. Admin. Code 2Q.0301 (stating that the owner or operator of a new, modified, or existing facility may not begin construction or operation without obtaining a construction and operation permit).

26. At all times relevant to this complaint, the PSD provisions in the applicable North Carolina SIP defined “major stationary source,” in relevant part, as “any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air

pollutant subject to regulation under the [CAA].” 40 C.F.R. § 51.166(b)(1)(i)(b); *see* 15A N.C. Admin. Code 2D.0530 (incorporating the definitions found under 40 C.F.R. § 51.166).

27. At all times relevant to this complaint, the PSD provisions in the applicable North Carolina SIP defined “major modification” as “any physical change in or change in the method of operations of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the [CAA].” 40 C.F.R. § 51.166(b)(2)(i); *see* N.C. Admin. Code 2D.0530 (incorporating the definitions found under 40 C.F.R. § 51.166).

28. At all times relevant to this complaint, the PSD provisions in the applicable North Carolina SIP defined “net emissions increase” as, “the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 51.166(b)(3)(i); *see* 15A N.C. Admin. Code 2D.0530 (incorporating the definitions found under 40 C.F.R. § 51.166).

29. At all times relevant to this complaint, the PSD provisions in the applicable North Carolina SIP provided that “actual emissions” are to be calculated in “tons per year” based on “actual operating hours, production rates, and types of materials

processed, stored or combusted” 40 C.F.R. § 51.166(b)(21)(ii); *see* 15A N.C. Admin. Code 2D.0530 (incorporating the definitions found under 40 C.F.R. § 51.166).

30. At all times relevant to this complaint, the applicable North Carolina SIP defined “significant” net emissions increase as a rate of emissions that would equal or exceed 40 tons per year of NO_x or SO₂ or 25 tons per year of PM. 40 C.F.R. § 51.166(b)(23)(i); *see* 15A N.C. Admin. Code 2D.0530 (incorporating the definitions found under 40 C.F.R. § 51.166).

Title V Permit Program

31. Title V of the CAA, 42 U.S.C. §§ 7661–7661f, establishes an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that all “applicable requirements” for compliance with the Act, including PSD and SIP requirements, are collected in one place.

32. On July 21, 1992, the EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a major source operating permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32,250 (July 21, 1992); *see generally* 42 U.S.C. § 7661a(b) (requiring the EPA Administrator to promulgate regulations implementing the Title V permit program). These regulations are codified at 40 C.F.R. Part 70.

33. The EPA granted final interim approval to North Carolina’s Title V program on November 15, 1995, *see* 60 Fed. Reg. 57,357 (Nov. 15, 1995), and it granted

final full approval to the State's Title V program on August 31, 2001. *See* 66 Fed. Reg. 45,941 (Aug. 31, 2001); *see also* 40 C.F.R. Part 70, app. A. North Carolina's Title V program is part of the North Carolina Administrative Code at Title 15A, Chapter 2, Subchapter Q, Section .0500 *et seq.*

34. At all times relevant to this complaint, federal regulations implementing Title V of the CAA and North Carolina's Title V regulations approved by the EPA provided that no major source may operate except in compliance with an operating permit issued by the permitting authority. 40 C.F.R. § 70.7(b); 15A N.C. Admin Code 2Q.0501(e), (f). Section 502(a) of the CAA similarly provides that no person may operate, *inter alia*, a major source after the effective date of any program approved or promulgated under Title V of the CAA, except in compliance with a permit issued under Title V. 42 U.S.C. § 7661a(a).

35. Section 505 of the CAA, 40 C.F.R. Part 70, and North Carolina's Title V regulations define "major source" to include a stationary source of air pollutants that directly emits or has the potential to emit 100 tons per year or more of any air pollutant subject to regulation. 42 U.S.C. § 7661(2)(B); 40 C.F.R. § 70.2; *see* 15A N.C. Admin. Code 2Q.0103(22) (stating that "major facility" means a major source as defined under 40 C.F.R. § 70.2).

36. At all times relevant to this complaint, Section 503(c) of the CAA, federal regulations implementing Title V of the CAA, and North Carolina's Title V regulations

approved by the EPA required the owner or operator of a source to submit an application for a Title V permit that is timely and complete and which, *inter alia*, identifies all applicable requirements (including any requirement to meet BACT pursuant to PSD), certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance. 42 U.S.C.

§ 7661b(c); 40 C.F.R. § 70.5(a) and (c); 15A N.C. Admin. Code 2Q.0507(a)–(c); *see also* 40 U.S.C. § 7602(e) (defining “person” to include a corporation).

37. At all times relevant to this complaint, Section 504(a) of the CAA, federal regulations implementing Title V of the CAA, and North Carolina’s Title V regulations approved by the EPA required that each Title V permit include, *inter alia*, enforceable emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA and the requirements of the applicable SIP, including any applicable PSD requirement to comply with an emission rate that meets BACT. 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6; 15A N.C. Admin. Code 2Q.0508.

38. At all times relevant to this complaint, federal regulations implementing Title V of the CAA and North Carolina’s Title V regulations approved by the EPA required all sources subject to regulation under 40 C.F.R. Part 70 to have a permit to operate that contains operational requirements of limitations necessary to ensure compliance with all applicable requirements. 40 C.F.R. § 70.1(b); 15A N.C. Admin. Code 2Q.0501(e).

39. At all times relevant to this complaint, federal regulations implementing Title V of the CAA and North Carolina's Title V regulations approved by the EPA defined "applicable requirement" to include any standard or requirement provided for in the SIP approved or promulgated by the EPA through rulemaking under Title I of the CAA that implements the relevant requirements, including any revisions to that plan promulgated in 40 C.F.R. Part 52. 40 C.F.R. § 70.2; 15A N.C. Admin. Code 2Q.0103(5).

ENFORCEMENT PROVISIONS

40. Section 113(a)(1) and (3) of the CAA, 42 U.S.C. §§ 7413(a)(1), (3), provides that the Administrator of the EPA may bring a civil action in accordance with Section 113(b) of the CAA whenever, on the basis of any information available, the Administrator finds that any person has violated, or is in violation of, any requirement or prohibition of, *inter alia*: (1) the PSD requirements of Section 165(a) of the CAA, 42 U.S.C. § 7475(a); (2) Title V of the Act, 42 U.S.C. §§ 7661–7661f, or any rule or permit issued thereunder; or (3) the North Carolina SIP or any permit issued thereunder.

41. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes EPA to initiate a judicial enforcement action for a permanent or temporary injunction against any person whenever such person has violated, or is in violation of, the requirements or prohibitions described in the preceding paragraph.

42. Section 167 of the CAA, 42 U.S.C. § 7477, authorizes EPA to initiate an action for injunctive relief, as necessary, to prevent the construction, modification, or

operation of a major emitting facility that does not conform to PSD requirements.

GENERAL ALLEGATIONS

43. PNA manufactures and markets glass and glazing products for the construction and automotive markets. PNA produces flat glass at the Laurinburg Facility through a “float glass” manufacturing process.

44. PNA’s flat glass is formed from a “batch mix” that is continuously fed into one of two furnaces.

45. PNA’s furnaces are designated as “Furnace No. 1” and “Furnace No. 2.” Furnace No. 1, also known as “emission source ES-01,” is a natural-gas-fired float furnace.

46. At all times relevant to this complaint, PNA was and is the owner and operator of the Laurinburg Facility.

47. At all times relevant to this complaint, PNA was and is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

48. At all times relevant to this complaint, the Laurinburg Facility was and is located in an area designated as an attainment area or unclassifiable area for NO_x, SO₂, and PM.

49. At all times relevant to this complaint, the Laurinburg Facility had the potential to emit more than 100 tons per year of pollutants subject to regulation under the CAA, including, but not limited to, NO_x, SO₂, and PM.

50. At all times relevant to this complaint, the Laurinburg Facility had the potential to emit more than 250 tons per year of pollutants subject to regulation under the CAA, including, but not limited to, NO_x, SO₂, and PM.

51. At all times relevant to this complaint, the Laurinburg Facility was and is a “major emitting facility” within the meaning of 42 U.S.C. § 7479(1) and a “major stationary source” within the meaning of 40 C.F.R. § 51.166(b)(1)(i)(b) and 15A N.C. Admin. Code 2D.0530.

52. At all times relevant to this complaint, the Laurinburg Facility was and is subject to the requirements of North Carolina’s PSD program contained in 15A N.C. Admin. Code 2D.0530.

53. At all times relevant to this complaint, the Laurinburg Facility was and is a “major source” within the meaning of Title V of the Act and the federal regulations implementing Title V, 42 U.S.C. § 7661(2); 40 C.F.R. § 70.2, and a “major facility” within the meaning of North Carolina’s Title V regulations, 15A N.C. Admin. Code 2Q.0502(a)(1).

FIRST CLAIM FOR RELIEF

(PSD Violations – Modification to Laurinburg Facility Furnace No. 1)

54. The allegations in Paragraphs 1 through 53 are re-alleged and incorporated herein.

55. PNA modified Furnace No. 1 in 1996.

56. The 1996 modification to Laurinburg Facility Furnace No. 1 constituted a physical change to the furnace within the meaning of 40 C.F.R. § 51.166(b)(2)(i) (1993) and the federally enforceable PSD regulations contained in N.C. Admin. Code 2D.0530 (1995).

57. The 1996 modification to Laurinburg Facility Furnace No. 1 resulted in a net increase in emissions from the Laurinburg Facility exceeding 40 tons per year of NO_x and SO₂ and 25 tons per year of PM.

58. PNA violated and continues to violate Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and the corresponding PSD regulations of the North Carolina SIP by (1) undertaking the major modification on Furnace No. 1 and operating the Laurinburg Facility without first obtaining a PSD permit as required by 15A N.C. Admin. Code 2D.0530 and 2Q.0300 *et seq.*; and (2) by failing to install and operate BACT for control of criteria pollutants as required by 15A N.C. Admin. Code 2D.0530.

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

60. PNA is subject to injunctive relief under Sections 113(b) and 167 of the CAA, 42 U.S.C. §§ 7413(b) and 7477.

SECOND CLAIM FOR RELIEF

(Title V Violations)

61. The allegations in Paragraphs 1 through 53 are re-alleged and incorporated

herein.

62. On or about May 1996, PNA submitted a Title V permit application to the North Carolina Department of Environment and Natural Resources (“NCDENR”) for the operation of Laurinburg Facility Furnace No. 1, which became effective on October 19, 2001. On or about November 30, 2005, PNA submitted its renewal Title V permit application.

63. In PNA’s Title V permit application, PNA failed to include all the applicable legal requirements, including PSD requirements, for Laurinburg Facility Furnace No. 1 as required by Sections 502(a), 503(c), and 504(a) of the CAA, 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a), the operating permit regulations set forth in 40 C.F.R. § 70, and the corresponding North Carolina Title V regulations set forth in 15A N.C. Admin. Code 2Q.0500 *et. seq.*

64. PNA violated and continues to violate Title V of the CAA and the applicable North Carolina SIP because it failed to submit a complete permit application under Title V and is operating without revising its deficient Title V operating permit to incorporate PSD BACT requirements and other requirements for modifications to Furnace No. 1.

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

66. PNA is subject to injunctive relief under Sections 113(b) and 167 of the

CAA, 42 U.S.C. §§ 7413(b) and 7477.

PRAYER FOR RELIEF

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

- A. Permanently enjoin PNA from operating Furnace No. 1 at the Laurinburg Facility, including the construction of future modifications, except in accordance with the CAA and applicable regulatory requirements;
- B. Order PNA to remedy its past violations by, *inter alia*, requiring PNA to install, as appropriate, BACT, or such other emissions control technology required by law, on Furnace No. 1 at the Laurinburg Facility for each pollutant subject to regulation under the CAA;
- C. Order PNA to apply for permits that are in conformity with the requirements of the CAA and the North Carolina SIP;
- D. Order PNA to remedy its past violations by, *inter alia*, requiring PNA to implement and operate appropriate emission reduction projects as mitigation for its past excess emissions that could have been avoided had PNA operated Furnace No. 1 at its Laurinburg Facility in conformity with the requirements of the CAA and the North Carolina SIP;
- E. Award Plaintiff its costs of this action; and
- F. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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