

August 26, 2020

***Via Electronic Mail***

Allegheny County Health Department  
Office of the Director  
542 Fourth Avenue  
Pittsburgh, PA 15219  
Attn: Administrative Hearing Office, Max Slater, Esq.  
[max.slater@alleghenycounty.us](mailto:max.slater@alleghenycounty.us)

**Re: Kopp Glass, Inc.  
Notice of Appeal of July 27, 2020 Enforcement Order (Violation No. 200701)**

Dear Mr. Slater:

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department, Kopp Glass, Inc. submits for filing the enclosed Notice of Appeal for the above-referenced Enforcement Order. Consistent with your June 1, 2020 Emergency Order Re: COVID-19, we are filing this Notice of Appeal electronically.

Regards,



Gary E. Steinbauer

Enclosure

cc: Jeffrey R. Bailey, Esq. (via e-mail)  
Chester R. Babst III, Esq.



# Notice of Appeal

This form is used to file an appeal of an order, notice, decision, determination, or ruling by the Allegheny County Health Department. Please complete this form (use additional pages as necessary). If more than one person or entity is filing this appeal, please attach a separate form for each additional appellant. **A copy of the order, notice, decision, determination, or ruling must be attached to the Notice of Appeal.**

Name Kopp Glass, Inc.

Mailing Address 2108 Palmer Street

City Swissvale State PA Zip 15218 Email N/A

Phone N/A Fax (optional) \_\_\_\_\_

If you are represented by an attorney, please provide contact information for your attorney:

Name Chester R. Babst III; Gary E. Steinbauer

Mailing Address Two Gateway Center, 6th Floor

City Pittsburgh State PA Zip 15222 Email cbabst@babstcalland.com  
gsteinbauer@babstcalland.com

Phone (412) 394-5407; (412) 394-6590 Fax (optional) \_\_\_\_\_

Describe your objections to the Department's actions and a statement describing the relief you want the Hearing Officer to grant. (*The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Use additional pages if necessary.*)

See attached (revoke, rescind, and/or vacate the Enforcement Order (Violation No. 200701) and find that Kopp Glass, Inc.'s

"pot furnace No. 2 (12 pot)" is not subject to 40 C.F.R. Part 63, Subpart SSSSSS).

**By filing this Notice of Appeal with the Allegheny County Health Department, I hereby certify that the information submitted is true and correct to the best of my information and belief.**

Signature /s/ Gary E. Steinbauer Date August 26, 2020

Appeals should be submitted in person or by mail to:  
**Allegheny County Health Department**  
**Attention: Hearing Officer**  
**542 4th Avenue**  
**Pittsburgh, PA 15219**

**BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT**

**542 FOURTH AVENUE  
PITTSBURGH, PA 15219**

**Kopp Glass, Inc.  
2108 Palmer Street  
Pittsburgh, PA 15218**

**Appellant**

)  
) **In re:**  
) **ACHD Violation No. 200701**  
)  
)  
)

**NOTICE OF APPEAL**

Pursuant to Article XI of the Rules and Regulations of the Allegheny County Health Department (“ACHD”), Appellant Kopp Glass, Inc. (“Kopp”) appeals the Enforcement Order issued on July 27, 2020 (“Enforcement Order”), in which ACHD ordered Kopp to take certain actions purportedly related to its June 5, 2020 Notice of Applicability Determination that “pot furnace No. 2 (12 pot)” operated by Kopp is subject to the National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources at 40 C.F.R. Part 63, Subpart SSSSSS (“NESHAP 6S”). More specifically, the Enforcement Order purports to require Kopp to: (a) within thirty (30) days, submit a plan for compliance with the applicable emission limits specified in 40 C.F.R. § 63.11451, and for conducting performance testing under 40 C.F.R. § 63.11452, subject to ACHD’s approval; and (b) within sixty (60) days, submit to ACHD a complete Title V Permit Application. Kopp timely appealed the related June 5, 2020 Notice of Applicability Determination and is now appealing the Enforcement Order. Kopp received notice of the Enforcement Order on July 27, 2020. A copy of the Enforcement Order is attached as Exhibit A to this Notice of Appeal.

Consistent with Sections 1103 and 1104 of Article XI of the ACHD Rules and Regulations, this submission constitutes timely filing of this Notice of Appeal of the Enforcement Order, and properly specifies the manner in which Kopp is aggrieved by the Department's action and related

grounds in support of this appeal, as well as the nature of Kopp’s direct interest in the action being appealed.

**A. Manner in Which Kopp is Aggrieved and Grounds of Appeal**

1. Kopp owns and operates a nearly 100-year old glass manufacturing facility in Swissvale, Pennsylvania, where it manufactures high-performance technical glass for mission-critical applications for the aerospace, defense, and other industrial sectors. On March 23, 2020, Governor Tom Wolf determined that Kopp’s operations play “a critical role in the manufacture and supply of goods and services necessary to sustain life, and may continue to operate.” Exhibit B, Critical Role Exemption -Authorization to Continue Operations from Governor Wolf to Kopp dated March 23, 2020.

2. On July 27, 2020, the ACHD issued the Enforcement Order to Kopp, and e-mailed a copy of the Enforcement Order to Kopp, through counsel, on July 27, 2020.

3. The Enforcement Order is inappropriate, unlawful, arbitrary, capricious, and unreasonable, because, among other things, ACHD issued the Enforcement Order based upon:

a. The erroneous reversal of its 2010 determination that Kopp is not subject to NESHAP 6S, and more specifically, that: (1) Kopp “does not use continuous furnaces, as defined in [40 C.F.R.] § 63.11459, to produce glass products”; (2) “[t]he glass products are produced in batches, and the furnaces are in operation only a portion of each work day”; and (3) “the rule [NESHAP 6S] does not apply;”

b. The erroneous reliance on a letter, dated April 12, 2016, from the U.S. Environmental Protection Agency (“EPA”) to the Oregon Department of Environmental Quality that includes a “non-binding regulatory

interpretation” that NESHAP 6S applies to “tank furnaces at art glass manufacturers in Portland, Oregon;”

- c. The erroneous reliance on a letter and Notice of Non-Compliance, dated February 3, 2020, from EPA to Paul Wissmach Glass Company, Inc. about “apparent non-compliance” with NESHAP 6S at its “colored glass manufacturing facility” in West Virginia;
- d. A misinterpretation and application of NESHAP 6S and the failure to adequately and appropriately assess whether it is technically and economically feasible for Kopp to comply with NESHAP 6S; and
- e. The failure to consider the entire rulemaking record for NESHAP 6S, including the response to comments, preamble, and other documents in rulemaking record.

4. In addition, the Enforcement Order is inappropriate, unlawful, arbitrary, capricious, and unreasonable, because, among other things, ACHD included unreasonable, inappropriate, and wholly unjustified deadlines to submit a “compliance plan” and “complete Title V permit application.”

ACHD acted unreasonably, arbitrarily, capriciously, and contrary to law in issuing the Enforcement Order for the above-referenced reasons.

**B. Nature of Kopp’s Direct Interest in the ACHD’s Action and this Appeal.**

5. Kopp has a direct interest in the Enforcement Order in this Appeal because NESHAP 6S compliance was not designed for operations like Kopp’s and could require Kopp to cease operations from “pot furnace No. 2.”

**C. Conclusion**

6. Through this Notice of Appeal, Kopp objects to the Enforcement Order, in its entirety, but reserves the right to amend or supplement the factual and legal basis of its Appeal as authorized by the ACHD Rules and Regulations. More specifically, Kopp reserves its right to amend this Appeal based on information that may become known based on discovery, changes in law or fact, action by ACHD, or other pertinent circumstances or changes.

7. For the foregoing reasons, Kopp respectfully requests that the Director rescind, revoke, and/or vacate the Enforcement Order and find that Kopp's "pot furnace No. 2 (12 pot)" is not subject to NESHAP 6S.

Respectfully submitted,

/s/ Gary E. Steinbauer  
Chester R. Babst III  
Gary E. Steinbauer, Esq.  
Babst, Calland, Clements, & Zomnir, P.C.  
Two Gateway Center  
Pittsburgh, PA 15222  
(412) 394-6500  
[cbabst@babstcalland.com](mailto:cbabst@babstcalland.com)  
[gsteinbauer@babstcalland.com](mailto:gsteinbauer@babstcalland.com)

August 26, 2020  
Date

# **EXHIBIT A**

COUNTY OF



ALLEGHENY

July 27, 2020

[VIA EMAIL: [GSteinbauer@babstcalland.com](mailto:GSteinbauer@babstcalland.com)]

Adam Willsey  
Director of Enabling Technologies  
Kopp Glass, Inc.  
2108 Palmer Street  
Pittsburgh, PA 15218

RE: **Enforcement Order #200701** – Kopp Glass, 2108 Palmer Street, Pittsburgh, PA –  
Compliance with 40 C.F.R., Part 63, Subpart SSSSSS

Dear Mr. Willsey:

Please find attached a copy of the Enforcement Order pertaining to the operations at Kopp Glass. Pursuant to Article XI (“Hearings and Appeals”) of the Allegheny County Health Department Rules and Regulations, you are notified that if you are aggrieved by this Order you have thirty (30) days from the date of issuance or receipt of this Order in which to file an appeal. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219.

Thank you for your anticipated prompt attention to this matter and future increased efforts to comply with all applicable regulations. Any questions concerning this Order should be directed to Shannon Sandberg, Air Quality Enforcement Section Chief, at 412-578-7969 or by email at [Shannon.Sandberg@AlleghenyCounty.us](mailto:Shannon.Sandberg@AlleghenyCounty.us) or Jeff Bailey, Esq., ACHD Assistant Solicitor, at 412-578-2658 or by email at [Jeff.Bailey@AlleghenyCounty.US](mailto:Jeff.Bailey@AlleghenyCounty.US).

Sincerely,  
*Dean DeLuca* (electronically signed)

Dean DeLuca  
Air Quality Program Manager

cc: Jeffrey Bailey, Esq, ACHD Assistant Solicitor (via email)  
Gary Steinbauer, Esq. (via email [GSteinbauer@babstcalland.com](mailto:GSteinbauer@babstcalland.com))  
Chip Babst, Esq. (via email: [CBabst@babstcalland.com](mailto:CBabst@babstcalland.com))



DEBRA BOGEN, MD, DIRECTOR  
**ALLEGHENY COUNTY HEALTH DEPARTMENT**  
**AIR QUALITY PROGRAM**  
301 39<sup>TH</sup> STREET • CLACK HEALTH CENTER • BUILDING 7  
PITTSBURGH, PA 15201-1811  
PHONE (412) 578-8103 • FAX (412) 578-8144  
24-HR (412) 687-ACHD (2243)  
[WWW.ALLEGHENYCOUNTY.US/HEALTHDEPARTMENT](http://WWW.ALLEGHENYCOUNTY.US/HEALTHDEPARTMENT)



**ALLEGHENY COUNTY HEALTH DEPARTMENT  
AIR QUALITY PROGRAM**

In the Matter of:

Kopp Glass, Inc.  
2108 Palmer Street  
Pittsburgh, PA 15218

ACHD Violation No. 200701

Violations of Article XXI (“Air  
Pollution Control”) at facility:

Kopp Glass, Inc.  
2108 Palmer Street  
Pittsburgh, PA 15218

**ENFORCEMENT ORDER**

**NOW**, this 27<sup>th</sup> day of July, 2020, the Allegheny County Health Department (hereinafter “ACHD”) issues this Enforcement Order after it has found and determined the following:

**I. AUTHORITY**

1. The Director of the Allegheny County Health Department (“ACHD”) has been delegated authority pursuant to the federal Clean Air Act (CAA), 42 U.S.C. §§ 7401 et seq., and the Pennsylvania Air Pollution Control Act (APCA), 35 P.S. §§ 4001 et seq., and the ACHD is a local health agency organized under Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 Pa.C.S. § 12001 et seq., whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including the Allegheny County Health Department’s Rules and Regulations, Article XXI, Air Pollution Control (hereinafter “Article XXI”).

2. The federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to regulate hazardous air pollutants (HAPs) from specific categories of industrial sources. HAPs are air pollutants known to cause cancer and other serious health impacts. The EPA regulations implementing these Clean Air Act requirements are known as the National Emission

Standards for Hazardous Air Pollutants (“NESHAP”). The ACHD incorporated by reference in Article XXI all of the NESHAP regulations. Article XXI, § 2104.08.a.

3. On December 26, 2007, the EPA issued the NESHAP for Glass Manufacturing Area Sources, 40 C.F.R., Part 63, Subpart SSSSSS (“Subpart 6S”). The NESHAP applied to any glass manufacturing facility that is an area source<sup>1</sup> of HAP emissions and uses one or more “continuous furnaces” to produce at least 50 tons per year (tpy) of glass that contains metal HAPs<sup>2</sup> as raw materials. 40 C.F.R. §§ 63.11448, 63.11449. An existing source subject to Subpart 6S was required to comply with the applicable emission limits by December 28, 2009.

4. Subpart 6S defines “continuous furnace” as a “glass manufacturing furnace that operates continuously except during periods of maintenance, malfunction, control device installation, reconstruction, or rebuilding.” 40 C.F.R. § 63. 11459.

5. The NESHAP regulations require that a source subject to Subpart 6S obtain a Title V permit. 40 C.F.R. § 63.11449(e). The Subpart 6S regulations provide for additional requirements which include that any affected furnace must meet the applicable emission limits specified in 40 C.F.R. § 63.11451, and conduct a performance test, 40 C.F.R. § 63.11452.

6. Following the issuance of Subpart 6S, the EPA recognized that there was some confusion within the glass industry regarding the definition of “continuous furnace.” On April 12, 2016, the EPA prepared a determination letter to the Oregon Department of Environmental Quality (ODEQ) in which the EPA provided a “clarification” of the term “continuous furnace.” The EPA’s determination concerned a glass manufacturing facility in Portland, Oregon that

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<sup>1</sup> An “area source” is a stationary source of HAP emissions that is not a major source. A major source of HAPs is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAPs.

<sup>2</sup> Glass manufacturing metal HAP is defined as “an oxide or other compound of any of the following metals included in the list of urban HAP for the Integrated Urban Air Toxics Strategy and for which Glass Manufacturing was listed as an area source category: arsenic, cadmium, chromium, lead, manganese, and nickel.” 40 C.F.R. § 63.11459.

melts glass in a “batch process,” but the actual furnaces are continuously operated at “high temperatures at all times.” The EPA clarified that the term “continuous furnace” includes furnaces that are continuously heated. The EPA determined that because the furnaces at the Portland facility are “kept hot (operated)” at all times, the facility operates a “continuous furnace” and is therefore subject to Subpart 6S.

7. On February 3, 2020, the EPA issued a notice that a glass manufacturing facility in West Virginia was in noncompliance with Subpart 6S. The facility has seven “pot furnaces” in which “natural gas continues to be fired into the furnace chamber” between batches and “are heated 38 to 41 weeks per year.” The EPA determined that the furnace, which “remains heated until the pot or furnace requires maintenance,” is a “continuous furnace” subject to Subpart 6S.

## **II. FINDINGS**

8. Kopp Glass, Inc. (hereinafter “Kopp Glass”) is a Pennsylvania corporation with a principal place of business at 2108 Palmer Street, Pittsburgh, Pennsylvania 15218.

9. Kopp Glass manufactures handmade technical and signal glassware, including lenses for lighting of airport runways and taxiways, exterior aircraft lighting, traffic control signals, walk signs and industrial and commercial lighting.

10. On June 15, 2010, the ACHD issued a Minor Source Operating Permit to Kopp Glass (Operating Permit #0264). At the time the ACHD prepared the permit, it was the ACHD’s understanding that Subpart 6S was only applicable if the glass making operations were continuous. The ACHD did not consider whether the actual furnaces were continuously operated (i.e., heated) when determining whether Subpart 6S was applicable. Based on this understanding, the ACHD determined that Kopp Glass was not operating a “continuous furnace” under Subpart 6S because its “glass products are produced in batches, and the furnaces are in operation only a portion of each work day.”

11. Following EPA's clarification of the term "continuous furnace" with regard to the glass manufacturing facilities in Oregon and West Virginia, the ACHD reevaluated whether Kopp Glass is subject to Subpart 6S.

12. On May 11, 2020, the ACHD submitted an information request to Kopp Glass for purposes of determining whether Kopp Glass is subject Subpart 6S. Kopp Glass provided the ACHD with this information on May 20, 2020.

13. On May 13, 2020, ACHD Air Quality Engineers performed a site visit of the facility and obtained additional information regarding Kopp Glass' operations for purposes of determining Subpart 6S applicability.

14. In its information response dated May 20, 2020, Kopp Glass provided furnace production data which indicated that Furnace No. 2 (12-pot furnace) has produced glass, which contains one or more of the glass manufacturing metal HAP as raw materials, at a rate of at least 50 tons per year (tpy). Furnace No. 2 (12-pot furnace) is continuously heated with natural gas and remains heated except during periods of maintenance, malfunction, control device installation, reconstruction, or rebuilding.

15. On June 5, 2020, the ACHD issued a determination that Kopp Glass is subject to the NESHAP for Hazardous Air Pollutants for Glass Manufacturing Area Sources, 40 C.F.R., Part 63, Subpart SSSSSS. Specifically, the ACHD determined that Furnace No. 2 (12-pot furnace) is subject to Subpart 6S.

16. On July 1, 2020, Kopp Glass filed a Notice of Appeal of the ACHD's June 5, 2020, determination that Kopp Glass is subject to Subpart 6S.

## ORDER

**NOW THEREFORE**, pursuant to the authority granted to the ACHD by Article XXI § 2109.03.a.1 and the Local Health Administration Law, 19 P.S. § 12010, it is hereby **ORDERED** as follows:

- (a) Within thirty (30) days of the date of this Order, Kopp Glass shall submit a plan for compliance with the applicable emission limits specified in 40 C.F.R. § 63.11451, and for conducting performance testing under 40 C.F.R. § 63.11452. The compliance plan shall be subject to ACHD approval; and
- (b) Within sixty (60) days of the date of this Order, Kopp Glass shall submit to the ACHD a complete Title V Permit application.

17. Pursuant to Article XI (“Hearings and Appeals”) of the Allegheny County Health Department Rules and Regulations, you are notified that if you are aggrieved by this Order you have thirty (30) days from the date of issuance or receipt of this Order in which to file an appeal. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219. A copy of Article XXI and Article XI may be found at <https://www.alleghenycounty.us/Health-Department/Health-Department-Regulations.aspx>.

18. This Order is enforceable upon issuance and any appeal of this Order shall not act as a stay unless the Director of the ACHD so orders.

19. Failure to comply with this Order within the times specified herein is a violation of Article XXI giving rise to the remedies provided by Article XXI § 2109.02 including civil penalties of up to \$25,000 per violation per day.

20. The provisions of this Order shall apply to, be binding upon, and inure to the benefit of the ACHD and Kopp Glass, and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

**DONE** and **ENTERED** this 27<sup>th</sup> day of July, 2020, in Allegheny County, Pennsylvania.

For:

**ALLEGHENY COUNTY HEALTH DEPARTMENT**



\_\_\_\_\_  
James Kelly  
Deputy Director for Environmental Health  
Allegheny County Health Department

7/27/2020  
Date