

**BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT**

**542 FOURTH AVENUE  
PITTSBURGH, PA 15219**

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

**Appellant**

)  
) **In re:**  
) **NOTICE OF APPLICABILITY**  
) **DETERMINATION**  
) **40 CFR Part 63, Subpart SSSSSS**  
)

**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 Notice of Applicability Determination (“Applicability Determination”) issued on June 5, 2020, in which ACHD determined 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”). Kopp received notice of the Applicability Determinations on June 5, 2020. A copy of the Applicability Determination 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 Applicability Determination, 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 June 5, 2020, the ACHD issued the Applicability Determination to Kopp, and e-mailed a copy of the Applicability Determination to Kopp, through counsel, on June 5, 2020.

3. The Applicability Determination is inappropriate, unlawful, arbitrary, capricious, and unreasonable, because, among other things, ACHD:

- a. Erroneously reversed 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. Erroneously relied 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. Erroneously relied 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. Misinterpreted NESHAP 6S and failed to adequately and appropriately assess whether it is technically and economically feasible for Kopp to comply with NESHAP 6S; and
- e. Failed to consider the entire rulemaking record for NESHAP 6S, including the response to comments, preamble, and other documents in rulemaking record.

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

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

4. Kopp has a direct interest in the Applicability Determination 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**

5. Through this Notice of Appeal, Kopp objects to the Applicability Determination, 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.

6. For the foregoing reasons, Kopp respectfully requests that the Director rescind, revoke, and/or vacate the Applicability Determination and find that Kopp’s “pot furnace No. 2 (12 pot)” is not subject to NESHAP 6S.

Respectfully submitted,

/s/ Gary E. Steinbauer  
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July 1, 2020  
Date