

Special Order By Consent
Saint-Gobain Containers, Inc. – Henderson Facility

precluded from conducting routine checker cleaning maintenance on Furnace #1 at the Henderson facility because those maintenance procedures can produce intermittent opacity readings in excess of 20%.

- E. Checker cleaning clears the air passageways in the checker pack for a regenerative glass furnace and reduces the overall emissions of the furnace by improving combustion efficiency and reducing the demand for combustion of fuels.
- F. Based, in part, on the provisions of 15A NCAC 2D .0521(f), the Division of Air Quality (“DAQ”) and the COMPANY have agreed that PERMIT T18 will be revised to provide a 40% opacity limit that is applicable to Henderson Furnace #1 during limited periods of checker cleaning. The COMPANY has submitted a permit application for this revision.
- G. As part of the agreement reached between DAQ and the COMPANY and consistent with 15A NCAC 2D .0521(f), the COMPANY agreed to conduct stack testing on Furnace #1 during a future checker cleaning event to demonstrate compliance with 15A NCAC 2D .0515.
- H. Given the passage of time since the last checker cleaning for Henderson Furnace #1, the initial checker cleaning process is expected to be more intensive than usual and may result in intermittent opacity exceedances above 40%.
- I. As a result, the COMPANY will conduct stack testing on Furnace #1 during the second checker cleaning process, which is expected to be more representative of the future procedures.

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- J. This ORDER was negotiated by DAQ and the COMPANY to address the anticipated emission exceedances associated with checker cleaning at Henderson Furnace #1 during the duration of this SOC.
- K. If the COMPANY fails to demonstrate compliance with either 15A NCAC 2D .0521 or 15A NCAC 2D .0515 during the period of this order, the DAQ will issue a maximum of one (1) Notice of Violation to the COMPANY pertaining to violations of 15A NCAC 2D .0521 and/or 15A NCAC 2D.0515 for the express purpose of checker cleaning.

THEREFORE, the COMMISSION and the COMPANY, to resolve and settle the emission exceedances anticipated during the initial checker cleaning procedure performed for Henderson Furnace #1 and specify terms to resolve and settle any emission exceedances during subsequent checker cleanings covered under this ORDER, agree to enter into this ORDER with the following terms and conditions:

- II. The COMPANY, desiring to operate in a safe and environmentally sound manner in accordance with the rules and regulations of the COMMISSION, hereby agrees:
 - A. The COMPANY shall conduct a one-time checker cleaning maintenance project for Henderson Furnace #1 (hereafter referred to as “the initial checker cleaning”) that will allow Furnace #1 to operate in a more efficient manner going forward. This activity will be completed within 90 days following the final execution of this ORDER.
 - B. During the initial checker cleaning, the COMPANY will attempt to minimize the duration and amount of excess emissions caused by the project.

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- C. For the first subsequent checker cleaning maintenance project at Henderson Furnace #1, the COMPANY will conduct a stack test for particulate matter pursuant to a DAQ-approved test protocol in order to demonstrate compliance with 15A NCAC 2D.0515.
 - D. Within 45 days of performing the particulate stack testing described above in Paragraph II.C, the COMPANY shall submit a test report to the DAQ addressing compliance with 15A NCAC 2D.0515.
 - E. If the particulate source test described in Paragraph II.C exceeds the 15A NCAC 2D.0515 particulate standard, the COMPANY will conduct particulate source testing during each subsequent checker cleaning event until a process (including the duration between checker cleaning events) is determined that will allow checker cleaning in compliance with 15A NCAC 2D.0515.
 - F. The Continuous Opacity Monitors (COMs) shall be functioning during the duration of all checker cleaning and source testing.
- III. The COMPANY shall submit no later than 15 days after the deadline for completing each task specified in Paragraph II, a certification, in the form of a letter, to the appropriate Air Quality Regional Supervisor, whether or not such task has been completed.
- IV. In the event the COMPANY fails to comply with any deadline set out in this ORDER or fails to achieve compliance with any emission limitation or emission standard in this ORDER, the COMPANY agrees that, unless excused by Paragraph V, the COMPANY will pay the COMMISSION according to the following schedules:

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Table 1A. Penalty Schedule for Paragraphs II.A – II.E

<u>Deadline and Requirement</u>	<u>Stipulated Penalties</u>
Failure to conduct the initial checker cleaning for Henderson Furnace #1 within 90 days following the final execution of this ORDER in accordance with Paragraph II.A.	\$500 per day for the first five days of noncompliance and \$1000 per day thereafter.
Failure to conduct a Method 5/202 stack test for Henderson Furnace #1 during the second checker cleaning maintenance project in accordance with Paragraph II.C.	\$500 per day for the first five days of noncompliance and \$1000 per day thereafter.
Failure to submit to DAQ within 45 days of testing a test report for the Method 5/202 stack test at Henderson Furnace #1 during the second checker cleaning maintenance project in accordance with Paragraph II.D.	\$500 per day for the first five days of noncompliance and \$1000 per day thereafter.
Failure to operate COMs during checker cleanings in accordance with Paragraph II.F.	\$500 per day for the first five days of noncompliance and \$1000 per day thereafter.

Table 1B. Penalty Schedule for Failure to Demonstrate Compliance with 2D .0515 or 2D

.0521 during Checker Cleaning Events

<u>Deadline and Requirement</u>	<u>Stipulated Penalties</u>
Exceedance of the 15A NCAC 2D .0521 40% opacity standard during checker cleaning covered under this ORDER	\$1,500 per checker cleaning event for exceeding the opacity standard of 40%
Exceedance of the 15A NCAC 2D .0515 particulate matter standard during the second and any other checker cleanings covered under this ORDER	\$2,000 per checking cleaning event for exceeding the particulate matter standard

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Stipulated Penalty:

Failure within thirty (30) days of receipt of the Director's written demand to pay the penalties will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. By entering into this ORDER, the COMPANY waives any and all defenses and agrees that the sole issue in such an action will be whether thirty (30) days has elapsed. The COMPANY shall pay all costs, including agency and attorney fees, associated with the collection of a delinquent stipulated penalty.

- V. The COMPANY's obligation to comply with the requirements set forth in this ORDER for which a stipulated penalty may be assessed, may be delayed or excused only to the extent that noncompliance is caused by circumstances beyond control of the COMPANY, as determined by the DAQ. Contractor delays or failure to obtain funding will not be considered events beyond the COMPANY's control. If any such delaying event occurs, the COMPANY shall notify the DAQ in writing within 10 days of encountering or discovering the delaying event, describing in detail the event or delay, the precise cause(s) of the event or delay, the measure(s) taken and to be taken by the COMPANY to prevent or minimize the event or delay, and the schedule by which those measures will be implemented. If the Director determines that non-compliance with this ORDER was caused by circumstances beyond the control of the COMPANY, the COMMISSION and the COMPANY jointly may stipulate and agree to a written modification of this ORDER. Extension of any compliance date pursuant to this Paragraph shall not extend any subsequent deadlines established in the ORDER unless the subsequent deadline necessarily is dependent upon completion of the earlier deadline.

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- VI. This ORDER shall pertain only to the equipment, sources and operations described in Paragraph I. Any violation of Air Quality Standards, resulting from other sources or equipment for which the COMPANY is responsible, may subject the COMPANY to appropriate enforcement action pursuant to North Carolina General Statutes, Subchapter 143-215.114A.
- VII. The COMPANY agrees to waive any rights it may have to seek judicial review to challenge this ORDER or to seek a stay of enforcement of this ORDER in connection with any judicial review of the State Implementation Plan. The COMMISSION acknowledges that this waiver does not prohibit the COMPANY from seeking modification of this ORDER if any regulatory standards upon which this ORDER is based are changed subsequent to its execution. In such cases, the COMPANY may petition that the ORDER be modified to reflect those regulatory changes.
- VIII. In the event the COMMISSION or the DAQ finds that reports, plans, specifications, or permit applications required by Paragraph II are in any respect deficient or if additional information is necessary to comply with the requirements of North Carolina General Statutes 143-215.107 et seq., any regulations promulgated there under, or any other applicable laws or regulations, the COMPANY shall be notified by the DAQ as soon as possible. The COMPANY shall be afforded an opportunity to modify, amend or supplement its submissions to make such submissions complete and appropriate.
- IX. All notices and reports required from the COMPANY by this ORDER shall be mailed, first class postage prepaid, to:

Patrick Butler, Regional Air Quality Supervisor
N.C. Dept. of Environment and Natural Resources
3800 Barrett Drive
Raleigh, North Carolina 27609

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All payments required from the COMPANY by this ORDER shall be mailed, first class postage prepaid to the following address:

Enforcement Group - Payments
NCDENR – DAQ
Mail Service Center 1641
Raleigh, North Carolina 27699-1641

- X. This ORDER constitutes full and final settlement and satisfaction of all matters addressed herein and any and all claims or prospective claims that the COMMISSION has or may have for the anticipated violations described in Paragraph I, including (without exception) emissions exceedances that may take place during the checker cleaning maintenance projects performed for Henderson Furnace #1 that are covered under this ORDER. This ORDER shall not affect the COMPANY'S obligation to comply with any other federal, state, or local laws.
- XI. Final approval and entry into this ORDER are subject to the requirements that the COMMISSION give notice of proposed consent decrees to the public, and that the public have at least 30 days within which to comment on the ORDER.
- XII. Should any provision of this ORDER be declared by a court of competent jurisdiction to be inconsistent with federal or state law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.
- XIII. Any modifications of this ORDER must be agreed to in writing and signed by both parties.
- XIV. Except as otherwise set forth herein, this ORDER is not and shall not be interpreted to be a permit or modification of an existing permit under federal, state or local law, and shall

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not be construed to waive or relieve the COMPANY of its obligations to comply in the future with any permit.

- XV. This Special Order by Consent shall expire on completion of the undertakings described herein but no later than one year following the final execution of this ORDER.

Agreed to this ____ day of _____, 2011

ATTESTED:

Saint-Gobain Containers, Inc.
Henderson Facility

BY: _____
Stephane Jean, Plant Manager
620 Facet Road
Henderson, NC 27537

APPROVED AND ACCEPTED:

BY: _____
Sheila Holman, Director
Division of Air Quality

For the ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: _____, 2011