



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

April 21, 2020

By Email

Jamey Halley
EHS Director
Anchor Glass Container Corporation
3001 North Rocky Point Drive East, Suite 300
Tampa, Florida
jamey.halley@anchorglass.com

Re: Force Majeure Notification under 2018 Consent Decree

Dear Mr. Halley:

We have received your letter of April 1, 2020, submitting a force majeure notice that you explain is due to the impact of the novel coronavirus COVID-19. This letter will serve as the initial response on behalf of the United States, after consultation with the States of Indiana and Oklahoma, pursuant to the Consent Decree entered in United States, et al v. Anchor Glass Container Corp., Case Number 3:18-cv-943-J-39JBT (M.D. Fla.) (Consent Decree or Decree).

Your letter explains that due to the national COVID-19 emergency, it is possible that Anchor may not be able to meet specific conditions of the Consent Decree due to potential difficulties in acquiring raw materials, possible restrictions on availability of third party contractors and management personnel, possible operational adjustments to maintain operation, constraints on travel and containment measures, and force majeure notices from vendors.

We appreciate your notice under the Consent Decree and your commitment to take all feasible steps to “mitigate, minimize or avoid non-compliance.” As you know, the Consent Decree requires that Anchor Glass exercise its “best efforts” to fulfill the Decree obligations, which “includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such even (a) as it is occurring and (b) after it has occurred in order to prevent or minimize any resulting delay to the greatest extent possible.” Consent Decree Paragraph 141. Anchor must adhere to the force majeure provisions of the Decree to the extent Anchor believes any delays in Anchor Glass’ obligations are warranted.

Because your notice is based on the occurrence of possible events that may or may not occur and impact compliance with the Decree, the United States must defer judgment on Anchor Glass' force majeure claims at this time. For a force majeure to be ripe for decision, Anchor must provide the detailed information specified in Consent Decree Paragraph 142.¹ This may require multiple notices, depending on the deadlines for the different obligations and the effect of the event on those deadlines. The United States' decision to defer judgment at this time should not be construed as acceptance of any potential noncompliance at the facility covered by the Decree.

Thank you for your attention to these matters. Please feel free to contact me to discuss any of these issues further.

Sincerely,



Phillip A. Brooks
Director, Air Enforcement Division

cc: Erin E. Filban Tislow, Office of Indiana Attorney General (via email)
Madison Miller, Oklahoma Department of Environmental Quality (via email)
Steve O'Rourke, DOJ (via email)
Erick Ihlenburg, Region 2 (via email)
Bonnie Sawyer, Region 4 (via email)
Padmavati Bending, Region 5 (via email)
Arati Tripathi, Region 6 (via email)

¹ The time appears to be ripe to submit further information related stack testing at Henryetta Furnace #1 and #2, Lawrenceburg Furnace #2, and Elmira Furnace #2 as required under the Decree. Please clarify your understanding of the dates by which the Decree required such testing and whether you had the tests timely scheduled and if you canceled or rescheduled the tests. Discussion between the parties may be warranted to achieve clarity.