

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

---

In the Matter of the Violations of the Environmental Conservation Law ("ECL") of the State of New York, and Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York ("6 NYCRR") by:

**Nulife Glass NY Inc.**  
**3213 Middle Rd.**  
**Dunkirk, NY 14048**  
**(Chautauqua County)**

**Order on Consent**  
**File No. 16-38**  
**R9-20160516-47**

**Respondent**

---

1. The New York State Department of Environmental Conservation ("Department") is an Executive Agency of the State of New York ("State") with jurisdiction over the environmental policy and programs of the State pursuant to, *inter alia*, the New York State Environmental Conservation Law ("ECL") 3-0301. This Order is issued pursuant to the Department's enforcement authority under ECL Article 71.
2. ECL Article 27 sets forth requirements governing the collection, treatment, and disposal of refuse and other solid waste and empowers the Department to adopt and promulgate solid waste management rules and regulations thereunder in 6 NYCRR Part 360, which governs the operation of solid waste management facilities in the State of New York.
3. Respondent Nulife Glass NY, Inc., owns and operates a CRT glass recycling facility for the production of high purity metallic lead and clean glass suitable for use as aggregate or feedstock for formed glass products (the "Facility"). The Facility is located at 3213 Middle Rd., Town of Sheridan, Chautauqua County, New York.
4. Respondent operates pursuant to Division of Materials Management Permit No. 9-0664-00035/02001, which sets forth requirements for financial assurance.
5. Permit Condition No. 8 provides that on March 11, 2014 the Respondent was to submit to the Regional Materials Management Engineer (RMME) a surety instrument in an amount sufficient to cover one-half of the anticipated cost of closure of the Facility. Condition 8 further provided that on the 11<sup>th</sup> of each of the five subsequent months the amount of surety must be increased by equal increments so that the surety is funded for the full costs of closure by August 11, 2014, amounts to be based upon the current closure cost estimate. In addition, the

closure cost estimate was to be updated as indicated in Condition 31, and the surety instrument was to be maintained and revised in accordance with Condition 31 and 32.

6. Permit Condition No. 30 provides that the Respondent shall maintain a surety instrument, acceptable to the RMME, to assure the proper closure of the Facility.

7. Permit Condition No. 31 provides that on January 1 and July 1 of each year that the Facility is in operation, the Respondent shall submit to the RMME an updated closure cost estimate, which shall be based on the maximum amount of material expected to be stored at the Facility six months into the future.

8. Respondent is in violation of 6 NYCRR Part 360 Permit # 9-0664-00035/02001, Special Condition 8, for failure to submit a surety instrument in an amount sufficient to cover one-half of the anticipated cost of closure of the Facility by March 11, 2014 and to make the required increases in surety on the 11<sup>th</sup> of each of the five subsequent months.

9. Respondent is in violation of 6 NYCRR Part 360 Permit # 9-0664-00035/02001, Special Condition 30, for failure to maintain a surety instrument to assure the proper closure of the Facility.

10. Respondent is in violation of 6 NYCRR Part 360 Permit # 9-0664-00035/02001, Special Condition 31, for failure to submit updated closure cost estimates on January 1 and July 1 of each year.

11. ECL 71-2703 provides that any person who violates any of the provisions of, or who fails to perform any duty imposed by ECL Article 27 or any rule, regulation, determination or order of the department made pursuant to this title, or any permit condition shall be liable for a civil penalty not to exceed \$7,500 (Seven Thousand Five Hundred Dollars) for each such violation and an additional penalty of \$1,500 (One Thousand Five Hundred Dollars) for each day during which such violation continues.

12. Respondent has affirmatively waived its rights to a hearing on these matters as provided by law and consents to the issuance and entry of this Order and agrees to be bound by the provisions, terms and conditions contained herein.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

#### **I. CIVIL PENALTY**

A. With respect to the violations set forth in this Order, the Department hereby assesses against Respondent a civil penalty in the amount of Five Thousand Dollars



(\$5,000), of which One Thousand Dollars (\$1,000) is to be paid by corporate check or money order made payable to the Department of Environmental Conservation and returned with this Order to the Regional Attorney, 270 Michigan Avenue, Buffalo, NY 14203. The remaining penalty of Four Thousand Dollars (\$4,000) is suspended but shall become payable to the Department in the event Respondent fails to meet a deadline for the submission of a closure cost estimate as set forth in Section II (Financial Assurance), below. This provision shall terminate one (1) year from the effective date of this agreement.

## **II. FINANCIAL ASSURANCE**

A. The Department accepts the Closure Cost Estimate submitted by Respondent's counsel as Exhibit C in a letter dated August 13, 2016, attached hereto as Exhibit B. Within thirty (30) days of the Effective Date of this Order, Respondent agrees to increase the value of the financial assurance instrument (an irrevocable letter of credit held by Evan's Bank) to Fifty Three Thousand Nine Hundred and Forty Five Dollars (\$53,945.00).

B. On January 15, 2017, Respondent shall submit to the Department an Updated Closure Cost Estimate. This Estimate shall be based on the amount of material stored at the Facility as of December 31, 2016. The Department agrees to the form of the Closure Cost Estimate template attached hereto as Exhibit B.

C. Commencing July 15, 2017, and continuing once every six months until termination of this Order, Respondent shall submit an Updated Closure Cost Estimate based on the amount of material stored at the Facility as of the last day of the previous month.

D. In the event that an Updated Closure Cost Estimate reflects an increase in the value of financial assurance required to ensure proper closure of the Facility, by more than a *de minimis* amount, Respondent shall, within fifteen (15) days, increase the value of its financial assurance instrument to reflect the amount reflected in the Updated Closure Cost Estimate.

E. In the event an Updated Closure Cost Estimate reflects a decrease in the value of financial assurance required to ensure proper closure of the Facility, Respondent shall nonetheless maintain the current value of its financial assurance instrument for the first eighteen (18) months from the Effective Date of this Order. Following the eighteenth (18) month from the Effective Date, Respondent may decrease the value of the financial assurance instrument provided to reflect the Updated Closure Cost Estimate, if approved in writing by the Department.

### **III. SUBMISSIONS**

A. 1. On the dates set forth in Section II (Financial Assurance), above, Respondent shall submit an Updated Closure Cost Estimate to the Department for its review.

2. Within 15 business days of receipt of Respondent's Updated Closure Cost Estimate, the Department shall notify Respondent in writing of its approval or disapproval of the submittal in accordance with the subpart (a), below.

a. If the Department disapproves the Updated Closure Cost Estimate, its written disapproval shall specify the reasons for its disapproval. Within fifteen (15) days of receipt of the Department's disapproval, Respondent shall make a revised submittal to the Department that addresses the Department's stated reasons for disapproving the first submittal.

b. Within 15 days from receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by the Department to make it approvable. If Respondent does not accept such modifications within fifteen (15) days of the receipt of the Department's writing, the revised submission will be deemed disapproved.

c. If its submittal is disapproved by the Department, Respondent may elect, in its discretion, to avail itself of the Dispute Resolution procedure set forth in Section IV, below.

B. The Respondent shall send all documentation required by this Order to the Department at the following address, unless otherwise noted:

NYSDEC, Region 9  
270 Michigan Avenue  
Buffalo, New York 14203  
Attn: Regional Materials Management Engineer

### **IV. DISPUTE RESOLUTION**

A. Respondent may, within fifteen (15) days following the Department's disapproval of its Updated Closure Cost Estimate, notify the Department in writing of the matter in dispute. The Department and Respondent shall engage in good faith negotiations for 30 days to resolve the dispute. If the dispute is not resolved, the matter shall be submitted to the Office of Hearings

and Mediation Services, whose decision shall be deemed a final agency action for purposes of Article 78 of the CPLR.

#### **V. ACCESS**

For purposes of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site or non-privileged records owned, operated, controlled or maintained by Respondent that are related to matters covered by this Order, in order to inspect and/or perform any other lawful duty or responsibility.

#### **VI. SETTLEMENT AND RESERVATION OF RIGHTS**

A. Upon completion of all obligations created in this Order, all claims for civil or administrative penalties concerning the violations described herein shall be deemed resolved, satisfied and discharged against Respondent. Any failure by Respondent to fully comply with the terms of this Order may subject Respondent to further enforcement for the events of non-compliance described herein.

B. Except as set forth in "V.A." above, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

C. Compliance with this Order shall not excuse nor be a defense to charges of any event of non-compliance with the ECL or any regulation or permit issued thereunder which may occur subsequent to the effective date of this Order.

D. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge or notice and the Department reserves the right to require Respondent to take any additional measures deemed necessary by the Department to protect human health or the environment. The Department further reserves all rights and remedies afforded to it under law or equity.

E. Respondent hereby reserves all rights and remedies afforded to it under law or in equity.



## **VII. INDEMNIFICATION**

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every nature and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and its successors (including successors in title) and assigns.

## **VIII. FORCE MAJEURE**

Respondent shall not be in default of the provisions of this Order, if its non-compliance is directly attributable to an act of God, war, insurrection, terrorism, strike, judicial injunction, failure of a federal or state agency or authority to issue any necessary permit or approval in a timely fashion where, in accordance with applicable law or regulations, Respondent has timely submitted a complete application and all necessary supporting information and are otherwise entitled to such permit or approval, catastrophic condition or other circumstance that is entirely beyond Respondent's control, and where Respondent has made all good faith efforts to comply with the provisions of this Order at issue ("force majeure"). If such a force majeure event occurs, Respondent shall be entitled to an extension of the Schedule A deadlines, limited to the period of time caused by such event that placed compliance with a provision of this Order beyond Respondent's control. Penalties for the failure to satisfy any Order requirement, due to a force majeure event, can be excused only under the terms of this decretal paragraph, and only where Respondent took all steps reasonably necessary to avoid or mitigate the delay, and strictly complied with the notice requirements of this paragraph, and that the delay is limited to an amount of time equal to the period of delay directly attributable to the force majeure. As a condition precedent to obtaining any relief under this provision, Respondent shall notify the Department in writing that a force majeure event has occurred, no later than twenty days after the date the Respondent knew or should have known of the occurrence of any force majeure event. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any compliance delays and shall request an appropriate extension or modification of the applicable deadlines under this Order. Failure to give such notice within the twenty day period constitutes a waiver of the ability to invoke force majeure as a defense to stipulated penalties.

F. Whenever a deadline in the Schedule A is missed, pursuant to a force majeure event or otherwise, Respondent shall exercise its best effort to recoup all lost time,

including where appropriate, the payment of expenses for overtime, double shifts or additional contractors or consultants, or alternative methods to the extent allowable under local law.

**IX. BINDING EFFECT**

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors and (including successors in title) and assigns.

**X. MODIFICATION**

No change or modification to this Order shall become effective except as specifically set forth in writing and approved by the Commissioner or a duly authorized representative. For proposed modifications to any deadline set forth in Order or Schedule A, Respondent shall submit a written request to the Department at least thirty (30) days prior to the deadline setting forth the reasonable grounds for the relief sought.

**XI. ENTIRE ORDER**

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning the resolution of the violations set forth in this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

**XII. EFFECTIVE DATE**

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or his designee signs it.

**XIII. TERMINATION**

This Order shall terminate upon the issuance of a final and enforceable Permit modification which addresses the matters set forth herein relative to financial assurance.

**XIV. AUTHORITY TO SIGN**

The person signing this Order represents that he/she has the full authority to bind the Respondent.

DATED: Oct 28, 2016  
Buffalo, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

by: Abby M. Snyder  
Abby M. Snyder  
Regional Director



CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

Nulife Glass NY, Inc.

By: Simon M. Great

Title: PRESIDENT

Date: 24<sup>th</sup> Oct 2016

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF CHAUTAUQUA)

On this 24 day of October in the year 2016 before me, the undersigned, personally appeared Simon M. Great, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Cathleen Gatto  
Notary Public

CATHLEEN GATTO  
Notary Public, State of New York  
Qualified in Chautauqua County  
Commission Expires Sept. 22, 2019

**(Backed by Evans Bank Irrevocable LOC)**

Estimated Total	\$ 53,945.00
-----------------	--------------



## Exhibit B: Template Closure Cost Estimate

Item No.	Item Description	Unit Cost <sup>1</sup>	Unit	Qty	Cost
<b>1</b>	<b>Dismantling of CRT Processing Line</b>				
a)	Labor: 10 days x 3 laborers	\$15.00	HR	240	\$ 3,600.00
b)	Equipment Rental: Manlift & Forktruck	\$1,600.00	WK	1	\$ 1,600.00
<b>2</b>	<b>Dismantling of Furnace and Disposal of Spent Refractory Lining</b>				
a)	Labor: 15 days x 3 laborers	\$15.00	HR	360	\$ 5,400.00
b)	Equipment Rental: Manlift	\$1,600.00	WK	1	\$ 1,600.00
c.)	Disposal of spent refractory (assume haz for Pb)	\$155.00	TON	2	\$ 310.00
<b>3</b>	<b>Cleaning of site buildings to remove any residual material</b>				
a)	Labor: 10 days x 2 laborers	\$15.00	HR	160	\$ 2,400.00
b)	Equipment Rental: Manlift & Forktruck	\$1,600.00	WK	1	\$ 1,600.00
c.)	Misc. Cleaning Materials and Supplies	\$1,000.00	LS	1	\$ 1,000.00
d)	Disposal of residual material from cleaning activities	\$155.00	TON	1	\$ 155.00
<b>4</b>	<b>Disposal of Stored CRTs</b>				
	Disposal in Hazardous Waste Landfill	\$155.00	TON		
<b>5</b>	<b>Disposal of Separated Lead Glass</b>				
	Lead Glass (Work-in-Progress)	\$155	TON		
<b>6</b>	<b>Disposal of Panel Glass <sup>2</sup></b>				
	Non-lead Glass (Work-in-Progress)	\$40.00	TON		
<b>7</b>	<b>Disposal of Stored Feedstock</b>				
	Lead Glass Smelter Ready Cullet	\$155	TON		
<b>8</b>	<b>Disposal of De-Leaded Glass<sup>2</sup></b>				
	Produced from Furnace	\$40.00	TON		
<b>9</b>	<b>Site Closure</b>				
a)	Construction Management Oversight	\$110.00	HR		
b)	Project Management (Consulting Services)	\$165.00	HR		
<b>Estimated Total</b>					<b>\$</b>

<sup>1</sup> . Average T & D cost for non-hazardous disposal and transportation to Part 360 Landfill (Chautauqua LF or WM Chaffee LF). Nulife reserves the right to increase or decrease the Unit Cost figures included herein as may be necessary or appropriate to reflect market conditions, subject to Department approval.

<sup>2</sup> Although this material is subject to Beneficial Use Determination ("BUD") 1065-9-07 for panel glass aggregate obtained by Nulife from the Department on July 13, 2013, all material remains a solid waste and must be factored into the Closure Cost Estimate until a) it is placed in transport for off-site use consistent with Condition 6 of BUD 1065-9-07, or b) when used on site, in a quantity not to exceed 5500 tons, to make concrete-bound products for use at the Dunkirk facility or as unbound aggregate in access road subbase in accordance with Condition 8 of BUD 1065-9-07.

<sup>2</sup> There is a pending application for BUD approval. Once issued, the terms of the BUD will control.



Schedule A

Respondent shall, on or before the dates indicated:

<u>Item</u>	<u>Date</u>
1. Submit a final Standby Trust Agreement including Schedules A, B, and C.	Within 30 days of the effective date of the Order.