

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
UROBOROS GLASS STUDIOS, INC.,) MUTUAL AGREEMENT
an Oregon corporation.) AND FINAL ORDER
No. AQ/V- NWR-16-087

WHEREAS:

1. Uroboros Glass Studios, Inc., (Uroboros) owns and operates a glass manufacturing facility at 2139 N. Kerby Avenue, Portland, Oregon.
2. On December 26, 2007, the United States Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Glass Manufacturing Area Sources in 40 Code of Federal Regulations (CFR) Part 63, subpart SSSSSS (hereinafter referred to as "6S" or "Regulation 6S"), adopted and incorporated by reference in Oregon Administrative Rule (OAR) 340-244-0220(1). 6S requires sources subject to the standard to, among other requirements, comply with prescribed emission limits, conduct emissions testing, monitor the performance of pollution control equipment, conduct recordkeeping and reporting and obtain a Title V Operating Permit. Existing sources subject to 6S were required to be in full compliance with 6S by December 28, 2009, and new sources subject to 6S were required to be in full compliance with 6S upon startup of the new source.

3. A glass manufacturing facility is subject to 6S if it is an area source of hazardous air pollutant (HAP) emissions and meets all of the following criteria:

A. The glass manufacturing facility is a plant site that manufactures flat glass, glass containers, or pressed or blown glass by melting a mixture of raw materials, as defined in Section 63.11459 of 6S, to produce molten glass and form the molten glass into sheets, containers, or other shapes;

B. The glass manufacturing facility is an area source of HAP emissions, which is any stationary source or group of stationary sources within a contiguous area under

1 common control that does not have the potential to emit any single HAP at a rate of 10 tons per
2 year or more, or a combination of HAPs at a rate of 25 tons per year or more; and

3 C. The glass manufacturing facility uses one or more continuous furnaces to
4 produce glass that contains compounds of one or more glass manufacturing metal HAP, as
5 defined in Section 63.11459 of 6S, as raw materials in a glass manufacturing batch formulation.

6 4. On April 12, 2016, EPA sent DEQ a letter clarifying that, for the glass
7 manufacturing NESHAP, the term “continuous furnace” means furnaces that are continuously
8 heated, as are the furnaces at Uroboros’ glass manufacturing facility. EPA’s letter stated that its
9 clarification was non-binding and left applicability determinations for DEQ to make. DEQ has
10 determined that it will apply EPA’s clarification for the purposes of implementing Regulation 6S.
11 Uroboros disagrees with EPA’s clarification and asserts that it is not consistent with the
12 definition of continuous furnaces as used in the industry and in treatises.

13 5. Based upon EPA’s April 12, 2016 letter, DEQ has determined that Uroboros’
14 glass manufacturing facility is subject to 6S because it meets all of the criteria in Paragraphs 3A
15 through 3C above. Uroboros denies that it was and is subject to 6S as currently written.

16 6. Regulation 6S requires that the emissions from any continuous furnace that makes
17 more than 50 tons per year of glass that contains metal HAPs must be tested, meet emissions
18 standards and be monitored, among other requirements. Section 63.11449 through 63.11457 of
19 6S. Regulation 6S, as informed by EPA’s guidance memo *Title V Applicability of One-time*
20 *“Reporting” Provisions for Nonmajor Sources*, also requires that any facility subject to 6S must
21 obtain a Title V permit. Section 63.11449(e) of 6S.

22 7. Prior to the April, 2016 letter from EPA, DEQ had considered Uroboros’ glass
23 manufacturing facility to be exempt from 6S, and therefore, Uroboros has not met the 6S
24 requirements.

25 8. Based upon EPA’s April 12, 2016 letter, DEQ has concluded that Uroboros is and
26 will be operating in violation of 6S and OAR 340-244-0220(1) until Uroboros fully complies

1 with the compliance schedule in Paragraph 15.A of this Mutual Agreement and Final Order
2 (MAO) and is issued an Oregon Title V Operating Permit in accordance with Paragraph 15.A.2.c.
3 Uroboros disagrees with DEQ's conclusion that it is and will be operating in violation of 6S and
4 OAR 340-244-0220(1).

5 9. DEQ and Uroboros recognize that the Environmental Quality Commission has the
6 power to impose civil penalties and to issue an abatement order for violations of Oregon
7 environmental law. Uroboros does not agree with DEQ's conclusion that Uroboros has violated
8 6S and Uroboros makes no admission of any such violation, and expressly denies such liability.
9 Nevertheless, Uroboros voluntarily agrees to this MAO in settlement of any claimed past
10 violations referred to in Paragraphs 5 through 8 above. Therefore, pursuant to ORS
11 183.417(3)(a) and (b), DEQ and Uroboros agree to settle any past claimed violations referred to
12 in Paragraphs 5 through 8 above, and to limit and resolve future possible violations referred to in
13 Paragraph 8 above, in advance, by this MAO.

14 10. On March 14, 2016, DEQ and Uroboros executed an Air Emissions Agreement in
15 which Uroboros agreed to operating conditions to limit its emissions of certain hazardous air
16 pollutants (the "Air Emissions Agreement").

17 11. On April 21, 2016, and May 5, 2016, the Environmental Quality Commission
18 (EQC) adopted temporary rules OAR 340-244-9000 through 9090 to address metal HAP
19 emissions from glass manufacturing facilities in Oregon. Uroboros is subject to temporary rules
20 OAR 340-244-9000 through 9090.

21 12. This MAO is not intended to limit, in any way, DEQ's right to proceed against
22 Uroboros in any forum in the unlikely event that there are future violations. DEQ and Uroboros
23 agree that this Agreement settles all passed claimed violations described in paragraphs 5 to 8,
24 above.

25 NOW THEREFORE, it is stipulated and agreed that:
26

1 13. Uroboros and DEQ agree to incorporate into this MAO by this reference, and to
2 comply with, the provisions of temporary rule OAR 340-244-9000 through 9090, as adopted by
3 the EQC on April 21, 2016, and amended by the EQC on May 5, 2016.

4 14. As long as this MAO remains in effect, Uroboros and DEQ agree that the
5 provisions of temporary rule OAR 340-244-9000 through 9090 will be binding upon Uroboros,
6 even if the temporary rule expires and is not made permanent.

7 15. The Environmental Quality Commission shall issue a final order:

8 A. Requiring Uroboros to comply with the following schedule and
9 conditions:

10 1. By August 31, 2016, submit a report to DEQ that contains the
11 following:

12 a. A list of all glass melting furnaces (as defined in 40 CFR
13 63.11459) at the Facility that will be used to produce glass on or after September 1, 2016, that
14 contains compounds of one or more glass manufacturing metal HAP (as defined in 40 CFR
15 63.11459), as raw materials in a glass manufacturing batch formulation;

16 b. For each glass melting furnace listed, provide the maximum
17 annual production capacity of glass in tons per year;

18 c. For each glass melting furnace listed, provide the maximum
19 expected annual production of glass that contains one or more glass manufacturing metal HAP in
20 tons per year; and

21 d. For each glass melting furnace listed indicate whether it is
22 or is not subject to the requirements of 6S based on Section 63.11449.

23 2. For each furnace identified in 15.A.1.d that is subject to 6S and
24 will be used to melt HAP containing glass after 9-1-16, comply with Paragraphs a. – c. below:

25 a. By September 1, 2016, comply with the following sections
26 of 6S for each HAP glass melting furnace identified:

- 1 i. Section 63.11451, Standards for New and Existing
2 Sources;
- 3 ii. Section 63.11453, Initial compliance demonstration;
4 requirements for new and existing sources, subsections (a) and (b) for any existing affected
5 furnace, and subsections (a) and (c), (d) or (e) for any new affected furnaces;
- 6 iii. Section 63.11454, Monitoring requirements for new
7 and existing sources, as applicable;
- 8 iv. Section 63.11455, Continuous compliance
9 requirements for new and existing sources;
- 10 v. Submit an updated Initial Notification required
11 under Section 63.11456; and
- 12 vi. Section 63.11457, Recordkeeping requirements.
- 13 b. By February 28, 2017, conduct the performance test for
14 new and existing sources as required in Section 63.11452, and in addition:
- 15 i. A performance test plan must be submitted to DEQ
16 at least 30 days prior to conducting the test;
- 17 ii. The performance test plan must be approved by
18 DEQ before conducting the performance test; and
- 19 iii. After completion of the performance test, submit a
20 Notification of Compliance Status as required under Section 63.11456(b);
- 21 c. By April 12, 2017, submit an application to DEQ for an
22 Oregon Title V Operating Permit.
- 23 B. Requiring Uroboros to comply with all applicable provisions of OAR 340-
24 244-9000 through 9090, as adopted on April 21, 2016, and as amended on May 5, 2016, through
25 the life of this MAO.
- 26
- 27

1 C. Requiring Uroboros to limit or stop the use of nickel in raw materials in
2 accordance with Table 1 of this MAO as follows:

3 1. This limitation applies to the total usage of nickel in raw materials
4 in all glass-making furnaces that are not controlled by an emission control device approved by
5 DEQ; and

6 2. In any week, use no more than the listed Maximum Weekly Usage
7 for nickel in raw materials;

8 a. This limitation applies to the weight of nickel itself in raw
9 materials, not the weight of the compounds that contain nickel.

10 **Table 1**

Metal	Action Levels*		Maximum Weekly Usage, pounds per week	80%	60%	40%
	Reduce Use Level (ng/m ³)	Stop Use Level (ng/m ³)		Reduction Step 1, pounds per week	Reduction Step 2, pounds per week	Reduction Step 3, pounds per week
Nickel ¹	40	80	10	8	6	4

11
12
13
14
15 ¹ The ABC of 4 ng/m³ for nickel refinery dust is based on a cancer risk of one potential occurrence of
16 cancer in a population of 1 million people (1 x 10⁻⁶). The Stop Use Level for nickel is 20 times the ABC,
17 which is related to a cancer risk of 20 potential occurrences of cancer in a population of 1 million people (2
18 x 10⁻⁵). The Reduce Use Level is 10 times the ABC, which is related to 10 potential occurrences of cancer
19 in a population of 1 million people (1 x 10⁻⁵).

20 *The ranges listed in Table 1 have been reviewed by and are acceptable to the Oregon Health Authority as
21 protective.

22 3. Prior to installation of all emission control devices required in
23 OAR 340-244-9030, in the event that rolling bi-weekly averages of ambient monitoring data
24 exceed an Action Level listed in Table 1, Uroboros must reduce or stop usage of nickel as
25 specified below:

26 a. For the purpose of this paragraph, the following apply:

1 i. The term "Monitored Level" means the rolling bi-
2 weekly average of the ambient monitoring data of nickel listed in Table 1 from monitors located
3 within 0.4 mile radius of the Facility;

4 ii. The rolling bi-weekly average will be based on the
5 most recent two weeks of monitoring; and

6 iii. The minimum data set required to calculate a rolling
7 bi-weekly average must have at least five daily values for each week.

8 b. If the Monitored Level of nickel exceeds the Reduce Use
9 Level in Table 1, Uroboros must reduce the use of nickel in raw materials in uncontrolled glass-
10 making furnaces to Reduction Step 1 upon being notified to do so by DEQ. The requirement to
11 reduce usage applies to the week following the week in which notification was given.

12 c. If a second consecutive Monitored Level of nickel exceeds
13 the Reduce Use Level in Table 1, Uroboros must reduce the use of nickel in raw materials in
14 uncontrolled glass-making furnaces to Reduction Step 2 upon being notified to do so by DEQ.
15 The requirement to reduce usage applies to the week following the week in which notification
16 was given.

17 d. If a third consecutive Monitored Level of nickel exceeds
18 the Reduce Use Level in Table 1, Uroboros must reduce the use of nickel in raw materials in
19 uncontrolled glass-making furnaces to Reduction Step 3 upon being notified to do so by DEQ.
20 The requirement to reduce usage applies to the week following the week in which notification
21 was given and all following weeks until DEQ provides notification that the Monitored Level is
22 again below the Reduce Use Level in Table 1.

23 e. If the Monitored Level of nickel exceeds the Stop Use
24 Level in Table 1, Uroboros must stop using nickel in raw materials in uncontrolled glass-making
25 furnaces upon being notified to do so by DEQ. The requirement to stop usage applies to the week
26

1 following the week in which notification was given and all following weeks until DEQ provides
2 notification that the Monitored Level is again below the Reduce Use Level in Table 1.

3 f. Following any requirement to reduce or stop usage of
4 nickel in raw materials, Uroboros may resume usage of nickel in raw materials at the Maximum
5 Weekly Usage level after DEQ provides notification that the Monitored Level of nickel is again
6 below the Reduce Use Level. Uroboros may resume usage in the week following the week in
7 which notification is given and all following weeks until Uroboros is required to reduce or stop
8 usage again.

9 g. In the event that DEQ requires Uroboros to stop using
10 nickel in raw materials **three** times pursuant to Paragraph 15.C.3.e above, Uroboros must
11 completely stop the use of nickel in raw materials in uncontrolled glass-making furnaces and will
12 not be allowed to resume using nickel in raw materials unless used in a glass making furnace that
13 is controlled by an emission control device approved by DEQ.

14 h. DEQ notifications will be provided no later than 12 PM on
15 Friday and will affect the following week. Notification will be by email or facsimile and DEQ
16 will attempt to confirm receipt by phone.

17 D. Requiring Uroboros, upon receipt of a written Penalty Demand Notice
18 from DEQ, to pay stipulated penalties as follows:

- 19 1. \$2,400 for each day that Uroboros fails to comply with the
20 requirement in Paragraphs 15.A and 15.B of this MAO; and
- 21 2. \$1,200 for each time that Uroboros exceeds any of the maximum
22 weekly usage levels or fails to comply with any reduction or stop levels in Table 1 and Paragraph
23 15.C above.

24 16. If any event occurs that is beyond Uroboros' reasonable control that causes or may
25 cause a delay or deviation in performance of the requirements of this MAO, Uroboros must
26 immediately notify DEQ verbally of the cause of delay or deviation and its anticipated duration,

1 the measures that have been or will be taken to prevent or minimize the delay or deviation, and
2 the timetable by which Uroboros proposes to carry out such measures. Uroboros must confirm in
3 writing this information within five (5) working days of the onset of the event. It is Uroboros'
4 responsibility in the written notification to demonstrate to DEQ's satisfaction that the delay or
5 deviation has been or will be caused by circumstances beyond the reasonable control and despite
6 due diligence of Uroboros. If Uroboros so demonstrates, DEQ will extend times of performance
7 of related activities under this MAO as appropriate. Circumstances or events beyond Uroboros'
8 control include, but are not limited to, acts of nature, unforeseen strikes, work stoppages, fires,
9 explosion, riot, sabotage, or war. Increased cost of performance or consultant's failure to provide
10 timely reports will not be considered circumstances beyond Uroboros' reasonable control.

11 17. Regarding the claimed violations set forth in Paragraphs 5 through 8, which are
12 expressly settled herein, and which are expressly denied by Uroboros Glass. Uroboros hereby
13 waives any and all of its rights to any and all notices, a contested case hearing, judicial review,
14 and to service of a copy of the final order herein. DEQ reserves the right to enforce this order
15 through appropriate administrative and judicial proceedings. (Notices should be sent to Eric
16 Lovell and his attorney Leonard Duboff.)

17 18. DEQ and Uroboros may amend the terms of this MAO by mutual written
18 agreement.

19 19. Uroboros agrees that this MAO shall be binding on Uroboros and its respective
20 successors, agents, and assigns. The undersigned representative of Uroboros certifies that he or she
21 is fully authorized to execute and bind Uroboros to this MAO. No change in ownership or
22 corporate or partnership status relating to the Facility will, in any way, alter Uroboros' obligation
23 under this MAO, unless otherwise approved in writing by DEQ.

24 20. All reports, notices and other communications required under or relating to this
25 MAO should be sent to: Dave Kauth, DEQ Northwest Region Office, 700 NE Multnomah Street,
26 Portland, OR 97232. Alternatively, communications can be directed via email to

1 kauth.dave@deq.state.or.us. The contact person for Uroboros is: ERIC LEWIS. Alternatively,
2 communications can be directed via email to ERIC@UROBOROS.COM.

3 21. Uroboros acknowledges that it has actual notice of the contents and requirements
4 of this MAO and that failure to fulfill any of the requirements hereof will constitute a violation of
5 this MAO and will subject Uroboros to payment of civil penalties.

6 22. Any stipulated civil penalty imposed pursuant to Paragraph 15.D is due upon
7 written demand. Stipulated civil penalties must be paid by check or money order made payable to
8 the "State Treasurer, State of Oregon" and sent to: Business Office, DEQ, 811 SW Sixth Avenue,
9 Portland, Oregon 97204. Within twenty (20) days of receipt of a "Demand for Payment of
10 Stipulated Civil Penalty" Notice from DEQ, Uroboros may request a hearing to contest the
11 Demand Notice. At any such hearing, the issue will be limited to Uroboros' compliance or
12 noncompliance with this MAO. The amount of each stipulated civil penalty for each violation
13 and/or day of violation is established in advance by this MAO and will not be a contestable issue.

14 23. DEQ may amend the compliance schedule and conditions in this MAO upon
15 finding that such modification is necessary because of changed circumstances or to protect public
16 health and the environment. DEQ must provide Uroboros a minimum of thirty (30) days written
17 notice prior to issuing an amended order modifying any compliance schedules or conditions. If
18 Uroboros contests the amended order, the applicable procedures for conduct of contested cases in
19 such matters will apply (ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-
20 0501 to 0700).

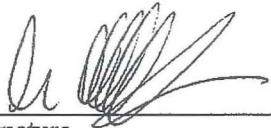
21 24. The Air Emissions Agreement is terminated on the date this MAO is fully
22 executed.

23 25. Provided all penalties due pursuant to Paragraph 15.D are paid in full, this MAO
24 will terminate at the time DEQ issues Uroboros an Oregon Title V Operating Permit.

25
26 UROBOROS GLASS STUDIOS, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

5-23-16
Date



Signature
ERIC LOVELL
Name (print)
PRESIDENT
Title (print)

FINAL ORDER

IT IS SO ORDERED:

DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

5/25/14
Date


Leah K. Feldon, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505

