

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
BULLSEYE GLASS CO.,

Respondent.

MUTUAL AGREEMENT
AND FINAL ORDER
CASE NO. WQ/SW-NWR-2017-051

WHEREAS: This Mutual Agreement and Order (“MAO”) is entered into between the Oregon Department of Environmental Quality (“DEQ”) and Bullseye Glass Company (“Respondent”) expressly as settlement of disputed claims and allegations with agreement that Respondent neither admits nor denies any findings of fact, conclusions of law, or factors alleged by DEQ in this MAO including Exhibits 1 and 2, attached. With these stipulations, this MAO provides as follows:

1. Respondent owns and operates a glass factory located at 3722 S.E. 21st Avenue in Portland, Oregon (the “Site”).

2. Respondent’s factory has used arsenic, barium, cadmium, chromium, hexavalent chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, and zinc in its glassmaking operations.

3. The metals described in paragraph 2, above, are considered “toxic materials” pursuant to OAR 340-044-0005(45).

4. Prior to October 22, 2016, emissions from Respondent’s factory settled onto the factory’s roof area.

5. Prior to October 2016, stormwater runoff from approximately 6,800 square feet of the factory’s roof area discharged into the ground via Drywell #1.

6. “Drywell #1” is located in the southwest corner of the Site.

7. Drywell #1 is considered an “injection system” or “underground injection system” pursuant to OAR 340-044-0005(23).

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1 8. Drywell #1 is a Class V injection system pursuant to OAR 340-044-0011(5)(d).

2 9. Respondent stopped using Drywell #1 in October 2016.

3 SOILS

4 10. On September 1, 2016, samples of sediment collected from inside Drywell #1
5 were analyzed and reported to have total metal concentrations of: arsenic of 4,565 mg/kg,
6 cadmium of 16,100 mg/kg, cobalt of 599 mg/kg, lead of 21,150 mg/kg, selenium of 5,640 mg/kg,
7 and zinc of 10,400 mg/kg.

8 11. On October 4, 2016, samples of sediment collected from inside Drywell #1 were
9 analyzed and reported to have total metal concentrations of: 4,340 mg/kg of arsenic, 10,200
10 mg/kg of cadmium, 995 mg/kg of cobalt, and 20,100 mg/kg of lead.

11 12. The reported concentrations in paragraphs 10 and 11 exceed Portland area
12 background concentrations and DEQ Risk Based Concentrations (RBCs) for Construction
13 Worker Soil, except for cobalt and selenium which do not have DEQ RBCs for Construction
14 Worker Soil.

15 13. On January 25, 2017, additional samples of soil in the area of Drywell #1 were
16 collected at various depths beginning with 10 feet below ground surface (bgs) which is the
17 approximate depth of the bottom of Drywell #1. Sampling results reported: arsenic
18 concentrations above published Portland background levels, DEQ RBCs for construction
19 workers, and the EPA industrial soil regional screening levels (RSLs) in depths up to 15 feet bgs;
20 cadmium concentrations above the DEQ construction worker RBC and EPA industrial soil RSLs
21 at 10 feet bgs, and copper, lead, selenium, silver, and zinc concentrations that exceeded Portland
22 area background in at least one of the samples taken below ground surface.

23 GROUNDWATER

24 14. The EPA Federal Drinking Water Standard maximum contaminant level (MCL)
25 for cadmium is 5 µg/L.

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1 15. A groundwater sample collected on January 26, 2017, from a temporary well
2 point located immediately beneath Drywell #1, reported a concentration of 131 µg/L of
3 cadmium.

4 16. The EPA Federal Drinking Water Standard MCL for selenium is 50 µg/L.

5 17. Groundwater samples collected on January 26, 2017, from temporary well point
6 locations located immediately beneath and surrounding Drywell#1 were analyzed and reported to
7 have concentrations of 85.5 µg/L, 289 µg/L, 121 µg/L, 129 µg/L, and 57.4 µg/L of selenium.

8 18. A groundwater sample collected on February 21, 2017, from a temporary well
9 point location approximately 100 feet to the southwest of Drywell #1 reported a concentration of
10 89.5 µg/L of selenium.

11 19. Cadmium and selenium are defined as “contaminants” according to OAR 340-
12 044-0005(10) as they do not naturally occur in groundwater in the area of Drywell #1 in
13 concentrations as high as the concentrations described in paragraphs 15, 17, and 18.

14 20. Respondent has developed a Draft Underground Injection Control Facility
15 Investigation and Closure Plan (July 2017) (the “Plan”) that DEQ approved on September 26,
16 2017.

17 ALLEGED VIOLATIONS

18 21. DEQ alleges that prior to October 2016, Respondent violated OAR 340-044-
19 0014(1) by contaminating groundwater through operating an injection system (Drywell #1) at the
20 Site which allowed stormwater runoff containing cadmium and selenium to discharge into
21 groundwater. The levels of cadmium and selenium in groundwater samples collected from the
22 vicinity of Drywell #1 exceeded the primary drinking water standards under the federal Safe
23 Drinking Water Act for cadmium and selenium. This is a Class I violation pursuant to OAR 340-
24 012-0055(1)(p).

25 22. DEQ alleges that prior to October 2016, Respondent violated OAR 340-044-
26 0015(2)(c) by operating a Class V injection system (Drywell #1) that injected fluids from an
27 industrial or commercial operation area where hazardous substances or toxic materials are used.

1 Specifically, stormwater from the roof area at the Site, where metals described in paragraphs 2
2 and 3 were in use, drained into Drywell #1. This is a Class I violation pursuant to OAR 340-012-
3 0055(1)(p).

4 23. Related to the violations alleged in paragraphs 21 and 22, above, DEQ
5 incorporates the factors, calculations, and allegations in Exhibits 1 and 2, attached, which are
6 subject to the stipulations recited in this MAO.

7 24. The Environmental Quality Commission has the authority to impose a civil
8 penalty pursuant to ORS 468.140(3).

9 25. Pursuant to ORS 183.417(3), DEQ and Respondent wish to settle those past
10 violations referred to in paragraphs 21 and 22 via this MAO.

11 NOW THEREFORE, it is stipulated and agreed that:

12 26. The Environmental Quality Commission shall enter a final order requiring that
13 Respondent:

- 14 a. Complete the work described in sections 3.1, 3.2, 3.3, 3.4 and 3.5 of the
15 approved Plan, incorporated in this MAO as Attachment 1, by December
16 30, 2017.
- 17 i. Should Respondent fail to complete the work described in
18 paragraph 26.a of this MAO by December 30, 2017, Respondent
19 must, upon receipt of a written Penalty Demand Notice from the
20 Department, pay a civil penalty of \$2,400 for each day after
21 December 30, 2017, that Respondent fails to complete such work.
- 22 b. Pay a total civil penalty of \$15,600 as set forth in the attached and
23 incorporated as Exhibits No. 1 and No. 2, for the violations listed in
24 paragraphs 21 and 22, above. Respondent will make the check or money
25 order payable to "State Treasurer, State of Oregon" and send to DEQ,
26 Business Office, 700 NE Multnomah Street, Suite #600, Portland, Oregon
27

1 97232. Full payment of the \$15,600 civil penalty is due within 30 days of
2 the execution of this MAO.

3 i. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2),
4 the violations alleged in paragraphs 21 and 22 of this MAO will be
5 treated as prior significant actions in the event a future violation
6 occurs.

7 27. Respondent agrees to waive any and all rights and objections Respondent may
8 have to a contested case hearing and judicial review of the violations described in this MAO and
9 to service of a copy of this MAO, which shall be effective when signed by DEQ.

10 28. This MAO is not intended to limit, in any way, DEQ's right to proceed against
11 Respondent in any forum for any past or future violations not expressly settled herein.

12 29. Respondent agrees that this MAO shall be binding on Respondent and its
13 respective successors, agents, and assigns. The undersigned representative of Respondent
14 certifies that he or she is fully authorized to execute and bind Respondent to this MAO.

15 30. Any stipulated civil penalty imposed pursuant to paragraph 26.a.i shall be due
16 upon written demand. Stipulated civil penalties shall be paid by check or money order made
17 payable to "State Treasurer, State of Oregon" and sent to DEQ, Business Office, 700 NE
18 Multnomah Street, Suite #600, Portland, Oregon 97232. Within 20 days of receipt of a "Demand
19 for Payment of Stipulated Civil Penalty" Notice from the Department, Respondent may request a
20 hearing to contest the Demand Notice. The issue shall be limited to Respondent's compliance or
21 non-compliance with this MAO. The amount of each stipulated civil penalty for each day of
22 violation is established in advance by this MAO and shall not be a contestable issue.

23 31. This MAO shall terminate when the civil penalties are paid and when the work
24 described in paragraph 26.a is complete. However, Respondent remains liable for stipulated
25 penalties for any violations of the MAO occurring during the period the MAO was in effect and
26 demanded pursuant to paragraph 30.

BULLSEYE GLASS CO.

1
2 11/21/17
Date

Daniel Schwofrer
Signature

DANIEL SCHWOFRER
Name (print)

PRES.
Title (print)

7 DEPARTMENT OF ENVIRONMENTAL QUALITY and
8 ENVIRONMENTAL QUALITY COMMISSION

9
10 11/21/17
Date

Sarah Wheeler

Sarah Wheeler, Acting 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

EXHIBIT No.1

DEQ'S FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Violating OAR 340-044-0014(1) by contaminating groundwater prior to October 2016.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(p).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (2)(a)(E)(iv).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) (a) (A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) as DEQ alleges Respondent had constructive knowledge (reasonably should have known) of the requirement.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Since DEQ discovered the contaminated soil and stormwater on June 23, 2016, Respondent has cooperated with DEQ to conduct analysis of the soils and groundwater at its Facility, close Drywell #1 and conduct a clean-up of the contamination at the Site.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0. Respondent's costs to investigate and remediate contamination and perform on-going monitoring will likely exceed the benefit Respondent gained through its noncompliance.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 4 + 2 + -3)] + \$0
= \$6,000 + (\$600 x 3) + \$0
= \$6,000 + \$1,800 + \$0
= \$7,800

EXHIBIT No.2

DEQ'S FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Violating OAR 340-044-0015(2)(c) by allowing a Class V injection system that injected fluids from an industrial area where toxic materials are used prior to October 2016.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(p).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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