



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
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July 11, 2023

CERTIFIED MAIL 9589 0710 5270 0110 6009 75

Owens-Brockway Glass Container, Inc.
CT Corporation System, Registered Agent
780 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Final Order and Stipulated Penalty Demand Notice
Case No. AQ-TV-NWR-2023-054

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued Owens-Brockway Glass Container, Inc. (Owens-Brockway) a Final Order and Stipulated Penalty Demand Notice in the amount of \$213,600 for violations of the Mutual Agreement and Final Order (MAO) the company signed with DEQ on October 21, 2021, as well as violations of the Oregon Title V Operating Permit for its glass manufacturing facility at 9710 NE Glass Plant Road in Portland, Oregon. Specifically, Owens-Brockway violated the MAO interim opacity limit (8.5% for a three-hour block) on two occasions in July 2022 and six occasions in May 2023. Owens-Brockway also violated the 20% opacity limit in the Title V permit in May 2023. Finally, the Penalty Demand Notice assesses civil penalties for failing to completely and promptly report the July 2022 excess emissions events to DEQ, as required under the MAO and Title V permit.

DEQ appreciates that following the July 2022 violations, Owens-Brockway implemented a system to ensure that excess emissions events are promptly reported to DEQ. In May 2023, Owens-Brockway promptly reported excess emissions and also promptly evaluated and corrected the conditions at the facility which led to high opacity during that time.

The 20% opacity violations addressed in this Order are part of a pattern of opacity violations at the facility over more than a decade. This pattern of violations, as well as noncompliance with a state particulate matter limit, have been addressed by a compliance schedule in the MAO to install catalytic ceramic filter pollution controls by May 9, 2024.

Owens-Brockway recently reported to DEQ that its glass making furnace D will be placed on a hot hold status in mid-July 2023. DEQ expects particulate matter and opacity to be significantly reduced as a result. You also reported that you nevertheless intend to complete the controls project on schedule as required under the MAO. The controls must reduce filterable particulate matter emissions by 95%, and will also reduce associated toxic air contaminants, as well as sulfur dioxide (SO₂) and nitrogen oxides (NO_x). Until the controls are operating, DEQ is committed to enforcing the requirements of the MAO, including the interim opacity limit, as a mechanism to encourage Owens-Brockway to operate the facility in a manner that minimizes particulate matter emissions.

Owens-Brockway Glass Container, Inc.

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As described in the MAO, upon receipt of a written notice from DEQ for certain specified violations of the MAO and Title V Permit, you are required to pay stipulated penalties for each violation. This letter and the attached Order serve as notice that the violations occurred, the penalty for the violations is \$213,600, and is now due.

Please be advised that further violations of the Permit or MAO are subject to additional civil penalties.

Your right to appeal the Order is outlined in the enclosed document as well as in the MAO.

If you have any questions about the attached Order please contact Becka Puskas in DEQ's Office of Compliance and Enforcement at 503-229-5058.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosure

cc: Geoff Tichenor, Stoel Rives LLP, 760 SW Ninth Avenue, Suite 3000, Portland OR 97205
John Cayton, Senior Environmental Attorney, Owens-Brockway Glass Container, Inc., 9710 NE Glass Plant Road, Portland, OR 97220
Jacob Wendler, Owens-Brockway Glass Container, Inc., 9710 NE Glass Plant Road, Portland, OR 97220
Josh Alexander, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

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2
3 IN THE MATTER OF:) FINAL ORDER AND STIPULATED
4 OWENS-BROCKWAY GLASS) PENALTY DEMAND NOTICE
5 CONTAINER, INC.,)
6 Respondent.) CASE NO. AQ-TV-NWR-2023-054

7 I. FINDINGS OF FACT AND CONCLUSIONS

8 1. Respondent operates a glass manufacturing facility at 9710 NE Glass Plant Road in
9 Portland, Oregon (the Facility) pursuant to Oregon Title V Operating Permit No. 26-1876-TV-01
(the Permit).

10 2. On October 22, 2021, Respondent and the Department of Environmental Quality (DEQ)
11 entered into Mutual Agreement and Final Order No. AQ/V-NWR-2020-208 (the MAO).

12 Interim opacity limit violations

13 3. Section II, Paragraph 3.c.i of the MAO requires Respondent to “Comply with the following
14 interim limit: the average opacity of Furnace D emissions, as measured by the COMS [Continuous
15 Opacity Monitoring System], must not exceed 8.5%, excluding any uncombined water, for any
16 three hour block period (i.e., the average of the thirty consecutive six-minute periods within the
17 block must not exceed 8.5%).”

18 4. During two three-hour block periods in July 2022, the average opacity of Furnace D emissions,
19 as measured by the COMS, exceeded 8.5%. Specifically, the average opacity of Furnace D
20 emissions, as measured by the COMS, exceeded 8.5% from 12:00:00 to 14:59:59 and from
21 18:00:00 to 20:59:59 on July 17, 2022.

22 5. During six three-hour block periods in May 2023, the average opacity of Furnace D emissions,
23 as measured by the COMS, exceeded 8.5%. Specifically, the average opacity of Furnace D
24 emissions, as measured by the COMS, exceeded 8.5% from 21:00:00 to 23:59:50 on May 13, 2023;
25 from 0:00:00 to 2:59:50 and 21:00:00 to 23:29:50 on May 14, 2023; and from 0:00:00 to 02:59:50,
26 12:00:00 to 14:59:50, and 15:00:00 to 17:59:50 on May 15, 2023.

27 6. On two occasions on in July 2022 and six occasions in May 2023, Respondent violated Section

1 II, Paragraph 3.c.i of the MAO. These are Class I violations according to OAR 340-012-0053(1)(a).

2 7. As stated in Section I, Paragraph 15.b of the MAO, Respondent is required to pay \$18,000 for
3 each violation (each three hour block period over the interim limit) of the interim limit in Section II,
4 paragraph 3.c.i of the MAO.

5 8. The penalty for Respondent's eight violations of the interim opacity limit described in Section
6 I, paragraph 6, above, is \$144,000.

7 20% opacity limit violations

8 9. Condition 17 of the Permit prohibits Respondent from causing or allowing opacity levels
9 from Furnace D (also known as GM4) to be equal to or greater than 20% opacity based on a six-
10 minute average.

11 10. Condition 18 of the Permit requires Respondent to monitor visible emissions from Furnace
12 D using a COMS to demonstrate compliance with the 20% opacity limit.

13 11. From 14:12:00 to 14:17:50 and again from 14:54:00 to 14:59:50 on May 13, 2023, the
14 opacity reading for Furnace D (GM4) was equal to or greater than 20% based on a six-minute
15 average.

16 12. From 10:12:00 to 10:17:50 on May 14, 2023, the opacity reading for Furnace D (GM4) was
17 equal to or greater than 20% based on a six-minute average.

18 13. From 20:54:00 to 20:59:50 and again from 21:30:00 to 21:47:50 on May 14, 2023, the
19 opacity reading for Furnace D (GM4) was equal to or greater than 20% based on a six-minute
20 average.

21 14. On May 13, 2023, and May 14, 2023, Respondent violated Condition 17 of the Permit and
22 ORS 468A.045(2) on at least five occasions. These are Class II violations according to OAR 340-
23 012-0054(2)(d).

24 15. As stated in Section I, Paragraph 15.c of the MAO, Respondent is required to pay \$18,000 for
25 each 20% opacity limit violation.

1 16. DEQ has elected to penalize for just three of the five 20% opacity limit violations. The penalty
2 for Respondent's 20% opacity limit violations described in Section I, paragraph 14, above, is
3 \$54,000.

4 Excess emission reporting violations

5 17. Condition 43.a of the Permit requires Respondent to notify DEQ immediately (within 1 hour
6 of the event) of all excess emissions from the Facility.

7 18. Condition 43.b of the Permit requires Respondent to submit a written report within 15 days
8 of the excess emission event that includes the information specified in Permit Conditions 43.b.i-
9 viii.

10 19. Respondent first notified DEQ of the July 17, 2022, 8.5% limit exceedances described in
11 Section I, paragraphs 4, above on October 28, 2022, when Respondent submitted its opacity
12 report for the third quarter of 2022.

13 20. Respondent violated Condition 43.a of the Permit for the July 17, 2022, excess emissions
14 events by failing to notify DEQ immediately (within one hour) of the events. These are Class II
15 violations according to OAR 340-012-0054(2)(g).

16 21. Respondent violated Condition 43.b of the Permit for the July 17, 2022, events by failing to
17 submit an excess emission report within 15 days of the exceedances. These are Class II violations
18 according to OAR 340-012-0054(2)(g).

19 22. As stated in Section I, Paragraph 15.d of the MAO, Respondent is required to pay \$6,600 for
20 each violation of the excess emission reporting requirements in the Permit.

21 23. The penalty for Respondent's excess emission reporting violations described in Section I,
22 paragraphs 20-21, above, is \$13,200.

23 MAO reporting violations

24 24. Section II, paragraph 3.c.ii of the MAO requires Respondent to "Submit six-minute COMS
25 data for Furnace D to DEQ for each calendar quarter, by no later than 30 days after the end of the
26
27

1 preceding quarter. The submittal must identify any three hour block period (the average of thirty
2 consecutive six-minute averages) that exceed 8.5%, excluding any uncombined water, provide an
3 explanation for the cause of the elevated opacity during that period, and describe any corrective
4 actions taken.”

5 25. On October 28, 2022, Respondent submitted an opacity report for the third quarter of 2022.
6 The report stated that the elevated opacity in July 2022 was associated with “process problems” but
7 provided no further explanation for the cause of the elevated opacity during that period. The report
8 did not describe any corrective actions taken.

9 26. Respondent violated Section II, paragraph 3.c.i of the MAO by failing to provide a complete
10 quarterly opacity report for Q3 2022. This is a Class I violation according to OAR 340-012-
11 0053(1)(a).

12 27. As stated in Section I, Paragraph 15.a of the MAO, Respondent is required to pay \$2,400 for
13 each violation of Section II, paragraph 3.c.ii of the MAO.

14 28. The penalty for Respondent’s reporting violation described in Section I, paragraph 26 above, is
15 \$2,400.

16 Total penalty

17 29. The total penalty for Respondent’s violations, as described in Section I, paragraphs 1-28 above,
18 is \$213,600.

19 II. ORDER TO PAY CIVIL PENALTY

20 Based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS, Respondent is
21 hereby ORDERED TO: Pay a total civil penalty of \$213,600.

22 If you do not file a request for hearing as set forth in Section III below, your check or money
23 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**
24 **Business Office, 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232.**

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1 III. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING


2 You have a right to a contested case hearing on this Final Order and Stipulated Penalty
3 Demand Notice. **As described in Section I, paragraph 18 of the MAO, the issue shall be**
4 **limited to Respondent's compliance or non-compliance with the MAO or Respondent's**
5 **compliance or non-compliance with the Permit, as applicable.** DEQ must receive the written
6 request for hearing **within 20 calendar days** from the date you receive this Final Order and
7 Stipulated Penalty Demand Notice. If you have any affirmative defenses or wish to dispute any
8 allegations of fact in this Order, you must do so in your request for hearing, as factual matters not
9 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
10 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
11 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
12 **600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to
13 **DEQappeals@deq.oregon.gov**. An administrative law judge employed by the Office of
14 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
15 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
16 attorney at the hearing, however you are not required to be. If you are an individual, you may
17 represent yourself. If you are a corporation, partnership, limited liability company,
18 unincorporated association, trust or government body, you must be represented by an attorney or
19 a duly authorized representative, as set forth in OAR 137-003-0555.

20 Active duty Service members have a right to stay proceedings under the federal Service
21 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
22 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
23 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
24 Department does not have a toll free telephone number.

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1 If you fail to file a request for hearing in writing within 20 calendar days of receipt of this
2 Order, the Order will become a final order by default without further action by DEQ as per OAR
3 340-011-0535(5). DEQ designates the relevant portions of its files, including information
4 submitted by you, as the record for purposes of proving a prima facie case.
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6
7

8 7/11/2023
9 Date


Kieran O'Donnell, Manager
Office of Compliance and Enforcement