



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

June 3, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 6308

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

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/V-NWR-2020-208

*DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.*

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,023,054 for air quality violations at your facility at 9710 NE Glass Plant Road in Portland, Oregon.

The enclosed Notice of Civil Penalty Assessment and Order (Notice) cites you for exceeding the total particulate matter (PM) limit in your Title V permit (0.10 grains per dry standard cubic foot) at glass melting Furnace D from April 22, 2020 to the present. Despite two source tests in excess of limit in 2020, you have not demonstrated that any corrective actions have been taken nor have you demonstrated that Furnace D is operating in compliance with the PM limit.

In addition, the Notice cites you for exceeding the 20% opacity limit in your Title V Operating Permit at Furnace D on April 23, 2020 and on March 16, 2021 and for late reporting of those exceedances to DEQ. The April 23, 2020 and March 16, 2021 opacity exceedances are part of a pattern of at least fifty violations of the opacity limit at both Furnace A and Furnace D since 2009, seven of which have occurred since 2017. DEQ is concerned that despite your significant efforts to modify your glass melting furnaces and to implement improved work practices and procedures to reduce PM and opacity emissions, both furnaces have continued to exceed the 20% opacity limit. Furthermore, at Furnace D, you frequently exceed approved "Opacity Values", which are calculated to represent the 99 percent upper confidence level of a normal distribution of 6-minute average opacity values measured during a PM source test.

DEQ issued this penalty because opacity is an indicator of PM emission levels, and PM, when emitted in excess, can contribute to respiratory distress in people. Once inhaled, PM can affect the heart and lungs, causing serious health problems such as decreased lung function, irregular heartbeat and chronic bronchitis. Further, the PM emitted from the glass manufacturing activities at your facility contains toxic air contaminants including lead, arsenic, and other heavy metals. These metals are regulated by the State of Oregon because they have the potential to cause serious adverse human health effects. Your facility is located in an environmental justice community. Relative to the state average, the population near the facility has a high percentage of people who meet factors related to environmental justice as defined by the U.S. Environmental Protection Agency (EPA). This includes race, income, education, language and age. The area surrounding the facility also rates highly compared to the rest of the state based on a screen for factors associated with air pollution. DEQ is committed to the principles of environmental justice, and to ensuring that the agency's actions—including compliance and enforcement—address the interests of Oregon communities, especially communities of color, low-income and other traditionally underrepresented populations, as much as state and federal laws allow.

Included in Section IV of the Notice is an order requiring you to keep Furnace A shut down, consistent with the decision you have communicated to DEQ, until it can be removed from your permit. The order also requires you to install pollution controls on Furnace D, as a permanent solution to reduce PM emissions and ensure consistent compliance with applicable PM and opacity limits. Based on your history of chronic non-compliance and your repeated exceedance of approved "Opacity Values," DEQ has concluded that the installation of controls is necessary to achieve compliance and restrain further violations of the PM and opacity limits in the Permit. In the interim, the order requires you to take immediate action to mitigate further violations of your Permit. Please note that this is a summary of the order; you must consult Section IV of the Notice for the order's more detailed requirements.

\$745,854 of the civil penalty represents the economic benefit you gained by failing to install, operate, and maintain pollution controls on Furnace D on or before April 22, 2020. If you complete the requirements in the order, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly. If you do not demonstrate an immediate return to compliance with your Title V permit, DEQ may assess additional civil penalties for any ongoing violations.

Importantly, the pollution controls to permanently reduce PM emissions required under Section IV of the enclosed Notice may *not* be sufficient to comply with DEQ's Regional Haze or Cleaner Air Oregon industrial air toxics requirements. In addition, recent air quality modeling shows that emissions from your glass melting furnaces are projected to cause exceedances of the 1-hour National Ambient Air Quality Standards (NAAQS) for NO<sub>2</sub> and SO<sub>2</sub>. Preventing violations of the NAAQS may require curtailment or pollution controls. Further, DEQ will soon be reopening your Title V permit in response to a May 10, 2021 EPA order resulting from an Earthjustice petition. The EPA order requires DEQ to include a compliance schedule in the permit to bring the facility into compliance with PM and opacity limits. Therefore, DEQ strongly recommends that you take a more holistic and cost effective approach to reducing your emissions by installing controls to address multiple pollutants of concern.

As a participant in the Regional Haze program, you have already identified a cost-effective pollution control technology to address multiple pollutants. On June 12, 2020 you submitted to DEQ a Four Factor Analysis under Round 2 of the Regional Haze Program, which found that combined control of

NOx, SO2 and PM by catalytic ceramic filters (CCF) is cost-feasible for your glass melting furnaces. As you know, you have also been identified as a source that will likely be required to install the proposed CCF controls under the Regional Haze Program to reduce NOx, SO2 and PM emissions over the next five years.

Since being called in to the Cleaner Air Oregon program in 2019, you have continued to work through the requirements of the program. DEQ has serious concerns about the risks that emissions from the facility's glass melting furnaces pose to the surrounding community. Based upon DEQ's initial evaluation of the risk, pollution control devices will likely be required under the Cleaner Air Oregon program. DEQ requested that you expedite the completion of your risk assessment report and submit it to DEQ for review and approval by no later than May 21, 2021. To date, you have not submitted the report or provided DEQ with a date you intend to complete the requirement. OAR 340-245-0030 requires you to complete a Level 3 risk assessment, including any updates to the supporting documentation (emissions inventory, risk assessment workplan, and modeling protocol, etc.) by no later than August 19, 2021.

While the order described above *requires* controls to address PM and opacity violations of your current Title V Permit, DEQ *strongly encourages* you to take a more holistic and cost-effective approach by installing controls that also reduce NOx, SO2, and toxic air contaminants. DEQ endeavors to work with you towards a timely emission controls solution that will achieve the goals of both the Regional Haze Program and the Cleaner Air Oregon Program, and ensure ongoing compliance with your Title V permit as required in this Notice. Furthermore, DEQ recognizes and appreciates your facility's contribution to glass recycling in Oregon. DEQ fully expects that you can comply with the law, operate the facility in manner protective of public health, and continue to contribute to Oregon's robust recycling landscape.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

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  
Dan Reimenschneider, Owens-Brockway Glass Container, Inc., 9710 NE Glass Plant Road, Portland, OR, 97220  
George Yun, DEQ  
Matt Hoffman, DEQ  
Kenzie Billings, DEQ  
Accounting, DEQ  
Donald Hendrix, AQ, DEQ  
US EPA, Region 10, c/o John Keenan, 1200 Sixth Avenue, Seattle, WA 98101

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: )  
OWENS-BROCKWAY GLASS ) NOTICE OF CIVIL PENALTY  
CONTAINER, INC., ) ASSESSMENT AND ORDER  
a Delaware corporation, Respondent. ) CASE NO. AQ/V-NWR-2020-208

## I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.070, 468.100, ORS 468.126 through 468.140, ORS 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 200, 208, 212, 214, 218, 226 and 238.

## II. FINDINGS OF FACT

1. Respondent operates a glass manufacturing facility at 9710 NE Glass Plant Road in Portland, Oregon (Facility).

2. On December 10, 2019, DEQ issued Oregon Title V Operating Permit No. 26-1876 (Permit) to Respondent. The Permit authorizes Respondent to discharge air contaminants associated with its operation of the Facility in conformance with the requirements, limitations and conditions set forth in the Permit.

3. The Permit was in effect at all material times.

4. The Facility has two glass melting furnaces: Furnace A (also referred to as GM1) and Furnace D (also referred to as GM4). Furnace A has two stacks, a north stack and a south stack. Furnace D has a single stack. Together, Furnace A and Furnace D are identified in the Permit as Emission Unit 4 (EU4).

5. On or about December 2019, Respondent placed Furnace D in a “hot hold” status where the furnace contained molten glass but was not producing glass containers.

6. On April 22, 2020, Respondent resumed glass production in Furnace D.

7. Respondent shut down Furnace A on June 8, 2020.

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8. In a letter dated April 22, 2021, Respondent notified DEQ that it had “recently made the decision to shut down Furnace A operations indefinitely” and that it was “preparing the necessary paperwork to remove Furnace A and its related emissions units from our Facility’s Title V permit.”

Particulate Matter Emission Limit Exceedances

9. Condition 14 of the Permit prohibits Respondent from emitting total particulate matter (PM) from either Furnace A or Furnace D in excess of 0.10 grains per dry standard cubic foot (gr/dscf).

10. On May 15, 2019, June 11, 2020, and August 18, 2020, Respondent conducted source tests for Furnace D to demonstrate compliance with the PM emission limits in the Permit. Table 1, below, shows the results of those source tests as compared to the PM limit described in Section II, Paragraph 7, above.

**Table 1. Total PM Emissions from Furnace D**

<b>Furnace D</b>	<b>May 2019 Source Test</b>	<b>June 2020 Source Test</b>	<b>August 2020 Source Test</b>	<b>Permit Limit (Condition 14)</b>
Total PM	0.12 gr/dscf <sup>1</sup>	0.13 gr/dscf	0.11 gr/dscf	0.10 gr/dscf

11. As of the date of this Notice, Respondent has not submitted any information to DEQ indicating that corrective actions have been taken at the Facility to reduce Total PM emissions from Furnace D and Respondent has not demonstrated a return to compliance with the Condition 14 Total PM limit.

Opacity Limit Exceedances

12. Condition 17 of the Permit prohibits Respondent from causing or allowing opacity levels from Furnace A and Furnace D to be equal to or greater than 20% opacity based on a six-minute average.

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<sup>1</sup> Under the previous version of the Permit (issued on March 7, 2007), the Total PM limit was 0.1 gr/dscf. According to the rounding conventions in DEQ’s Source Sampling Manual, the 0.12 gr/dscf source test result from May 2019 is rounded to 0.1 gr/dscf (the same number of significant figures as the Permit limit in effect at the time). Therefore, the May 2019 test did not result in a violation of the Total PM limit under the Permit in effect at the time of the source test. The Permit in effect as of December 10, 2019 includes an updated limit of 0.10 gr/dscf. Therefore, the values in Table 1 are presented with two significant figures, consistent with the Total PM limit in effect as of December 10, 2019.



1 13. Condition 18 of the Permit requires Respondent to monitor visible emissions from Furnace  
2 A and Furnace D using a continuous opacity monitoring system (COMS) to demonstrate compliance  
3 with the 20% opacity limit described in Section II, Paragraph 12, above.

4 14. Between 2:22 a.m. and 2:27 a.m. on April 23, 2020, the emissions from Furnace D were  
5 equal to or greater than 20% based on a six minute average.

6 15. Between 12:08 p.m. and 12:30 p.m. on March 16, 2021, the emissions from Furnace D were  
7 equal to or greater than 20% based on a six minute average.

8 Failure to Timely Report Opacity Exceedances

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

11 17. Condition 43.b of the Permit requires Respondent to submit a written report to DEQ within  
12 15 days of the excess emissions event.

13 18. Respondent first notified DEQ of the April 23, 2020 20% opacity exceedance described in  
14 Section II, Paragraph 14, above via email at 5:30 p.m. on April 23, 2020.

15 19. Respondent first notified DEQ of the March 16, 2021 20% opacity exceedance described in  
16 Section II, Paragraph 15, above on April 29, 2021, when DEQ received Respondent's quarterly opacity  
17 monitoring report.

18 20. Respondent submitted a written excess emissions report for the March 16, 2021 20%  
19 opacity exceedance to DEQ on May 25, 2021.

20 Controls are Needed to Restrain Further Violations

21 21. Between 2009 and the date of this Notice, Respondent has exceeded the 20% opacity limit  
22 in the Permit on at least 50 occasions.

23 22. After a series of 38 opacity limit exceedances in 2009 and 2010, DEQ required in Case No.  
24 AQ/V-NWR-2011-092 that Respondent submit to DEQ a Corrective Action Plan (CAP I), to evaluate  
25 options, including emissions controls, for maintaining compliance with the 20% opacity limit.

26 23. On October 28, 2011, Respondent submitted CAP I to DEQ. CAP I concluded that emission  
27 control devices were not economically feasible and proposed maintenance and work practices  
improvements at the Facility to control opacity from the glass melting furnaces. CAP I included

1 improved maintenance procedures for furnace components, moving the exhaust air intake for Furnace  
2 A, modifying the glass color change process, and adding limit switches on Furnace A to help avoid a  
3 fuel-rich combustion environment in the furnace. Respondent also stated in CAP I that it would  
4 continue to use pollution prevention measures already in place at the Facility including batch wetting,  
5 optimization of combustion parameters, maintenance of furnace fuel and combustion air delivery  
6 equipment, and use of electric boost.

7 24. On April 17, 2012, DEQ approved Respondent's CAP I submittal, with the requirement that  
8 Respondent continue to monitor the implementation of CAP I and report to DEQ on a monthly basis.  
9 Between July 2013 and September 2015, DEQ approved Respondent's proposed amendments to CAP  
10 I, including automatic gas shut off procedures triggered by opacity spikes, new standard operating  
11 procedures for restarting gas flow to the furnaces, furnace regenerator cleaning procedures and furnace  
12 overcoating procedures.

13 25. Despite Respondent's implementation of CAP I, as amended, and as required under  
14 Condition 19 of the Permit, Respondent's glass melting furnaces have exceeded the 20% opacity limit  
15 in the Permit on at least seven occasions between 2017 and the date of this Notice. More specifically:

16 a. Furnace A exceeded the 20% opacity limit in the Permit on June 28, 2017 and  
17 September 15, 2017 (addressed in Case No. AQ/V-NWR-2019-016) and March 30, 2019 (addressed in  
18 Case No. AQ/V-NWR-2019-260); and

19 b. Furnace D exceeded the 20% opacity limit in the Permit on August 7, 2019  
20 (addressed in Case No. AQ/V-NWR-2019-260), October 7, 2019 (addressed in Case No. AQ/V-NWR-  
21 2020-042), and April 23, 2020 and March 16, 2021 (addressed in this Notice).

22 26. Conditions 15 and 16 of the Permit, derived from the New Source Performance Standards  
23 for Glass Manufacturing Plants, 40 CFR part 60, subpart CC (NSPS subpart CC), adopted and  
24 incorporated by reference in OAR 340-238-0060(1), require Respondent to operate a COMS, record  
25 opacity data, and report to the U.S. Environmental Protection Agency (EPA) and DEQ excess  
26 emissions that exceed an "Opacity Value." The Opacity Value corresponds to the 99 percent upper  
27 confidence level of a normal distribution of 6-minute average opacity values measured during a source  
test for particulate matter.



1           27. The purpose of the excess emissions reporting—based on a statistical relationship between  
2 particulate matter emissions and opacity established during a source test—is to alert EPA and DEQ  
3 enforcement personnel to consider whether the facility is being properly operated and maintained  
4 consistent with good air pollution control practices. The excess emissions reporting helps demonstrate  
5 whether the facility’s “modified-processes” (defined in the NSPS subpart CC as “using any technique  
6 designed to minimize emissions without the use of add-on pollution controls”, 40 CFR 60.291) are  
7 sufficient to provide continuous PM emission reduction once a performance test is completed.<sup>2</sup>

8           28. Based on a source test conducted in November 2006, Respondent established “Opacity  
9 Values” for Furnace A of 19.4% (south stack) and 20.0% (north stack). The “Opacity Value” for  
10 Furnace D was 10.1%.

11           29. According to Respondent’s excess emissions reports submitted to DEQ, during calendar  
12 years 2017 and 2018, Respondent’s Furnace D emissions exceeded the 10.1% Opacity Value described  
13 in Section II, Paragraph 29, above, on 83 occasions on 27 different calendar dates.

14           30. On April 22, 2019, DEQ issued Case No. AQ/V-NWR-2019-016, noting the frequent excess  
15 emissions reported from Furnace D. In addition, DEQ required Respondent to conduct source testing on  
16 Furnaces A and D and to submit a comprehensive, written Corrective Action Plan (CAP II) for

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17  
18 <sup>2</sup> See Proposed Amendments to NSPS subpart CC, 48 FR 50670 (“*Continuous Compliance*. As noted above,  
19 EPA is concerned that modified processes do not necessarily provide continuous emission reduction and that  
20 once a performance test is completed, neither the operator nor the EPA would have any basis for knowing  
21 whether the facility is continuing to maintain the emission reduction observed during the performance test. To  
22 assure that owners and operators of modified processes have sufficient information to operate their modified  
23 processes in compliance, and for EPA to assure that these sources effectively operate and maintain their  
24 processes, EPA is proposing that opacity monitors be installed and operated on such sources. ... EPA is  
25 proposing the use of opacity monitors for furnaces using modified processes to ensure proper operation and  
26 maintenance based on the correlation between particular [particulate] concentrations and opacity. This approach  
27 would require simultaneous Method 5 and opacity monitoring during the initial performance test. This approach  
would determine, on a case-by-case basis, a statistical relationship for each furnace between particulate matter  
emissions and opacity. Using this statistical relationship, which would allow for variability in opacity  
monitoring, the glass plant would be monitored for opacity using a continuous monitor, and excess emissions  
would be reported to EPA. Compliance with the emission limits in § 60.293(b) [PM standards for glass melting  
furnace with modified process] would be determined as provided in § 60.293(e). The continuous monitoring  
required by § 60.293(c) would not be used to determine compliance with § 60.293(b). However, a repeated  
pattern in excess emission reports would alert EPA enforcement personnel to consider whether the facility was  
being properly operated and maintained consistent with good air pollution control practices.”); *see also* Final  
Rule, 49 FR 41030 (adopting the COMS and excess emissions reporting requirements and reiterating the  
rationale).

maintaining compliance with the 20% opacity limit. CAP II was to include an evaluation of the causes of the 20% opacity exceedances and the excess emissions reported to DEQ, a review of the corrective actions already taken by the Facility and why they had not resulted in consistent compliance, and an evaluation of the feasibility of installing emissions controls on the glass melting furnaces.

31. On October 4, 2019, Respondent submitted CAP II to DEQ. CAP II reiterated the work practices and procedures already in place at the Facility to reduce opacity (under CAP I, as amended) and proposed no new corrective actions aside from reviewing maintenance procedures and standard operating procedures and conducting additional training. CAP II evaluated the feasibility of installing pollution control devices and found that two technologies (bag house and venturi scrubber) were “potentially cost effective per ton of PM reduced.” Nevertheless, CAP II recommended that “no additional pollution controls be required at this time.” As of the date of this Notice, DEQ has not approved CAP II.

32. In May 2019, Respondent conducted the source testing required in Final Order No. AQ/V-NWR-2019-016. During the PM source tests conducted on May 15, 2019 (Furnace D) and May 20, 2019 (Furnace A), Respondent measured opacity with its COMS. The 6-minute average opacity data recorded during the source test was as follows, as compared to the Opacity Values that the Facility was using for excess emissions reporting:

**Table 2. Opacity**

	<b>Average Opacity Value during PM Source Test</b>	<b>Range of Opacity Values during PM Source Test</b>	<b>“Opacity Value” used for Excess Emissions Reporting</b>
Furnace A (GM1) North Stack	4.0%	2.7% - 5.3%	20.0%
Furnace A (GM1) South Stack	3.7%	2.5% - 5.0%	19.4%
Furnace D (GM4)	4.6%	4.0% - 5.8%	10.1%

1 33. On January 24, 2020, DEQ issued Case No. AQ/V-NWR-2019-260. Noting the discrepancy  
2 between the opacity data collected during the May 2019 source tests and the “Opacity Value” being used  
3 by the Facility for excess emissions reporting, the Final Order in Case No. AQ/V-NWR-2019-260  
4 required Respondent to reset those Opacity Values—for Furnace D based on the May 2019 source test,  
5 and for Furnace A, based on a repeat source test that was required under the Final Order.

6 34. On February 26, 2020, DEQ approved an updated Opacity Value of 4.7% for Furnace D,  
7 based on the 99 percent upper confidence level of a normal distribution of 6-minute average opacity  
8 values measured during the May 15, 2019 PM source test.<sup>3</sup>

9 35. Based on Respondent’s quarterly opacity reports submitted to DEQ, Respondent has  
10 operated Furnace D in excess of the 4.7% opacity value described in Section II, Paragraph 35, as  
11 follows:

- 12 a. 44.58% of total operating time in the second quarter of 2020;
- 13 b. 18.35% of the total operating time during the third quarter of 2020;
- 14 c. 14.12% of the total operating time during the fourth quarter of 2020; and
- 15 d. 40.63% of the total operating time during the first quarter of 2021.

### 16 III. CONCLUSIONS

17 1. From April 22, 2020 to the date of this Notice, Respondent has violated Condition 14 of the  
18 Permit and ORS 468A.045(2) by exceeding the 0.10 gr/dscf Total PM emission limit for Furnace D  
19 (GM4), as described in Section II, Paragraphs 1-11, above. Specifically, as described in Section II,  
20 Paragraph 10, above, Furnace D exceeded the Condition 14 limit in three consecutive source tests,  
21 conducted in May 2019, June 2020 and August 2020. The 0.10 gr/dscf Total PM emission limit was  
22 effective with the Permit renewal on December 10, 2019. Thus, Respondent has been continuously out  
23 of compliance with the limit since it resumed glass production in Furnace D on April 22, 2020. These  
24 are Class I violations, according to OAR 340-012-0054(1)(o). DEQ hereby assesses a \$979,854 civil  
25 penalty for these violations.

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26 <sup>3</sup> Respondent also conducted PM source tests on Furnace D in June 2020 and August 2020. The 99 percent upper  
27 confidence level of a normal distribution of 6-minute average opacity values measured for Furnace D during  
those source tests was 6.28% for the June 2020 source test and 5.13% for the August 2020 source test.

2. On April 23, 2020 and March 16, 2021, Respondent violated Condition 17 of the Permit and ORS 468A.045(2) by causing or allowing opacity levels from Furnace D (GM4) to be equal to or greater than 20% opacity based on a six minute average, as described in Section II, Paragraphs 12-15, above. These are Class II violations, according to OAR 340-012-0054(2)(d). DEQ hereby assesses a \$36,000 civil penalty for these violations.

3. Respondent violated Conditions 43.a of the Permit by failing to timely notify DEQ of the April 23, 2020 and March 16, 2020 excess emissions events, and violated Condition 43.b of the Permit by failing to timely submit a written excess emission report to DEQ regarding the March 16, 2021 event, as described in Section II, Paragraphs 16-20, above. These are Class II violations, according to OAR 340-012-0054(2)(g). DEQ hereby assesses a \$7,200 civil penalty for these violations.

4. Based on the violations alleged in Section III, Paragraphs 1-2, and the facts alleged in Section II, Paragraphs 21-35, above, DEQ concludes that Respondent is not operating Furnace D consistent with good air pollution control practices to minimize PM emissions and opacity pursuant to 40 CFR §60.11(d) and Condition 52 of the Permit. Therefore, DEQ concludes that Respondent must install pollution controls on Furnace D in order to ensure continuous compliance with the PM and opacity limits in Respondent's Permit and to restrain further violations. Moreover, until such controls can be installed as a permanent solution, Respondent must take interim measures to mitigate further non-compliance with PM and opacity limits.

#### IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO:

1. Pay a total civil penalty of \$1,023,054. The determination of the civil penalties are attached as Exhibits 1-4 and are incorporated as part of this Notice.

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

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1 2. Comply with the following schedule and conditions:

- 2 a. Keep Furnace A and its related emissions units shut down until it can be removed from  
3 the Permit according to Section IV, Paragraph 2.d and 2.e.
- 4 b. Within 15 days of the order becoming final by operation of law or on appeal, submit to  
5 DEQ for approval an Interim Measures Plan to mitigate further non-compliance with  
6 Condition 14 and 17 of the Permit until pollution controls are installed according to  
7 Section IV, Paragraph 2.e. The Interim Measures Plan must include a proposed timeline  
8 for implementation, and must consider the option of reducing production at Furnace D.
- 9 c. Immediately implement the Interim Measures Plan once approved by DEQ.
- 10 d. Within 90 days of the order becoming final by operation of law or on appeal, submit to  
11 DEQ an administratively complete Notice of Approval application and permit  
12 modification application to: (i) remove Furnace A and its related emissions units from  
13 the Permit; and (ii) install pollution control devices on Furnace D (GM4). Respondent's  
14 pollution controls proposal must reduce PM emissions and ensure continuous  
15 compliance with Condition 14 of the Permit, Condition 17 of the Permit, and the  
16 applicable NSPS subpart CC Filterable PM limit for glass melting furnaces not using  
17 modified processes, 40 CFR 60.292(a)(1).
- 18 e. Within one year of DEQ's written approval in response to Respondent's applications  
19 under Section IV, Paragraph 2.d, above: (i) complete the installation of the pollution  
20 control devices on Furnace D and submit a Notice of Completion to DEQ; and (ii)  
21 subject to DEQ's incorporation of changes in Respondent's Title V operating permit in  
22 response to Respondent's applications under Section IV, Paragraph 2.d, above, begin  
23 operating the pollution control devices on Furnace D in compliance with the modified  
24 Permit.

25 Documentation demonstrating compliance with Paragraphs 2.a through 2.e of Section IV must  
26 be submitted to George Yun, Oregon Department of Environmental Quality, 700 NE Multnomah  
27 Street, Suite 600, Portland OR 97232 or [George.Yun@deq.state.or.us](mailto:George.Yun@deq.state.or.us), with a copy to Becka Puskas,

Oregon Department of Environmental Quality, 700 NE Multnomah Street, Suite 600, Portland OR 97232 or [Becka.Puskas@deq.state.or.us](mailto:Becka.Puskas@deq.state.or.us).

#### V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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1 If you fail to file a timely request for hearing, the Notice will become a final order by default  
2 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
3 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
4 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
5 the relevant portions of its files, including information submitted by you, as the record for purposes of  
6 proving a prima facie case.

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Kieran O'Donnell, Manager  
Office of Compliance and Enforcement



## EXHIBIT 1

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

VIOLATION NO. 1 Exceeding the 0.10 gr/dscf Total PM emission limit for Furnace D, in violation of Condition 14 of the Permit and ORS 468A.045(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(o).

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)(A) because Respondent has a Title V permit.

"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 initially receives a value of 27 according to OAR 340-012-0145(2)(a)(C) and (D). Respondent has: 20 Class II violations in case no. AQ/V-NWR-2009-204 issued April 5, 2010; 18 Class II violations in case no. AQ/V-NWR-2011-092, issued on August 31, 2011; three Class II violations in case no. AQ/V-NWR-2012-046 issued on October 1, 2012 and one Class II violation in case no. AQ/V-NWR-2013-068, which were combined into a single Mutual Agreement and Final Order that became final on July 23, 2013; two Class II violations in case no. AQ/V-NWR-2019-016; one Class I and four Class II violations in case no. AQ/V-NWR-2019-260, issued on January 24, 2020; and three Class II violations in case no. AQ/V-NWR-2020-042, issued on March 19, 2020. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P will not exceed 10.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0. According to OAR 340-012-0145(4)(e), DEQ will set the O factor at 0 when assessing separate penalties for each occurrence of the violation.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. As a permittee, Respondent is presumed to have knowledge of the requirements in the Permit, including emission limits. Respondent has actual knowledge that Furnace D has been in continuous non-compliance with the Condition 14 Total PM emission limit since April 22, 2020. Respondent conducted a PM source test in May 2019, and passed due to rounding conventions (see Notice, footnote 1). In case no. AQ/V-NWR-2019-260, issued on January 24, 2020, DEQ notified Respondent that the same result (0.12 gr/dscf) would be a violation under Condition 14 of the Permit renewal issued on December 10, 2019, and ordered Respondent to retest. Respondent source tested Furnace D in June 2020 and August 2020 and reported exceedances of the 0.10 gr/dscf limit to DEQ in its source test reports, submitted on July 27, 2020 and October 2, 2020, respectively. Those exceedances were confirmed by DEQ's source test review memos sent to Respondent on October 2, 2020 and November 19, 2020, respectively. The exceedances were also communicated to Respondent in a Pre-Enforcement Notice issued by DEQ on November 19, 2020. As of the date of this Notice, Respondent has not notified DEQ of any corrective actions taken to reduce Total Particulate Matter emissions from Furnace D and Respondent has not demonstrated a return to compliance with Condition 14 of the Permit. Thus, Respondent failed to act intentionally with actual knowledge of the requirement.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not notified DEQ of any corrective actions taken to consistently reduce Total Particulate Matter emissions from Furnace D and Respondent has not demonstrated compliance with Condition 14 of the Permit.

GRAVITY BASED PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 0 + 8 + 2)] \\ &= \$6,000 + (\$600 \times 20) \\ &= \$6,000 + \$12,000 \\ &= \$18,000\end{aligned}$$

In accordance with ORS 468.140(2), each day of violation constitutes a separate offense. DEQ is using its enforcement discretion to assess a separate civil penalty for each month, from April 22, 2020 through the date of this Notice, that Respondent exceeded the Condition 14 Total PM limit in the Permit. Therefore, DEQ is assessing an \$18,000 civil penalty for each of the 13 months (13 occurrences) of the violation.

$$\$18,000 \text{ per month} \times 13 \text{ occurrences} = \$234,000$$

## ECONOMIC BENEFIT

"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 \$745,854. Of this total EB amount, \$499,885 is the amount Respondent gained by avoiding spending an estimated \$625,715\* in capital costs to install pollution control devices to reduce PM emissions from Furnace D, which should have been incurred on or before April 22, 2020. \$245,969 is the amount Respondent gained by avoiding spending an estimated \$334,841\* in annual operation and maintenance costs for the pollution controls, which should have been incurred during the year following April 22, 2020. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

\*Note: The capital cost and annual operating cost figures are from Respondent's Regional Haze Four Factor Analysis report submitted to DEQ on June 12, 2020 (PM Baghouse Costs for Furnace D). The EB calculation excludes cost of "Portland Beautification Option" from the capital cost estimate.

## TOTAL PENALTY

According to OAR 340-012-0045, the total civil penalty is the gravity based penalty of \$234,000 plus the economic benefit of \$745,854. Thus, the total civil penalty for Violation No. 1 is \$979,854.

## EXHIBIT 2

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

VIOLATION No. 2: Respondent violated Condition 17 of the Permit and ORS 468A.045(2) by causing or allowing opacity levels from Furnace D to be equal to or greater than 20% opacity based on a six minute average.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(d).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(a)(A) because Respondent is a federal major source as defined in OAR 340-200-0020.

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 II, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V permit.

"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 initially receives a value of 27 according to OAR 340-012-0145(2)(a)(C) and (D). Respondent has: 20 Class II violations in case no. AQ/V-NWR-2009-204 issued April 5, 2010; 18 Class II violations in case no. AQ/V-NWR-2011-092, issued on August 31, 2011; three Class II violations in case no. AQ/V-NWR-2012-046 issued on October 1, 2012 and one Class II violation in case no. AQ/V-NWR-2013-068, which were combined into a single Mutual Agreement and Final Order that became final on July 23, 2013; two Class II violations in case no. AQ/V-NWR-2019-016; one Class I and four Class II violations in case no. AQ/V-NWR-2019-260, issued on January 24, 2020; and three Class II violations in case no. AQ/V-NWR-2020-042, issued on March 19, 2020. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P will not exceed 10.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0. According to OAR 340-012-0145(4)(e), DEQ will set the O factor at 0 when assessing separate penalties for each occurrence of the violation.

- "M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent's Permit expressly prohibits opacity levels of 20% or greater based on a six minute average. As described in the Notice, Respondent's Facility has a history of 20% opacity violations at both furnaces dating back to at least 2009. Respondent has actual knowledge of the 20% opacity limit, and its history of violations because those violations have been addressed in formal enforcement as follows: case no. AQ/V-NWR-2009-204 (20 opacity violations); case no. AQ/V-NWR-2011-092 (18 opacity violations); case no. AQ/V-NWR-2012-046 (three opacity violations); case no. AQ/V-NWR-2013-068 (one opacity violation); case no. AQ/V-NWR-2019-016 (two opacity violations); case no. AQ/V-NWR-2019-260 (two opacity violations); and case no. AQ/V-NWR-2020-042 (one opacity violation). Like the opacity violations addressed by previous formal enforcement cases, the April 23, 2020 opacity violation described in the Notice was due to mechanical or process failures. By failing to take adequate corrective actions to address these mechanical or process failures or otherwise prevent ongoing intermittent opacity violations, despite a history of such violations and formal enforcement, Respondent failed to act intentionally with actual knowledge of the requirement.
- "C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violations as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).
- "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 \$745,854. Of this total EB amount, \$499,885 is the amount Respondent gained by avoiding spending an estimated \$625,715\* in capital costs to install pollution control devices to reduce PM emissions and achieve consistent compliance with the 20% opacity limit for Furnace D; these costs should have been incurred on or before April 22, 2020. \$245,969 is the amount Respondent gained by avoiding spending an estimated \$334,841\* in annual operation and maintenance costs for the pollution controls, which should have been incurred during the year following April 22, 2020. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model. This economic benefit is not included in the penalty calculation below because it is already captured in Exhibit 1.\*\*

*\*Note:* The capital cost and annual operating cost figures are from Respondent's Regional Haze Four Factor Analysis report submitted to DEQ on June 12, 2020 (PM Baghouse Costs for Furnace D). The EB calculation excludes cost of "Portland Beautification Option" from the capital cost estimate.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$= \$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 0 + 8 + 2)] + \$0^{**}$$

$$= \$6,000 + (\$600 \times 20) + \$0^{**}$$

$$= \$6,000 + \$12,000 + \$0^{**}$$

$$= \$18,000$$

Respondent has two Class II, major magnitude violations as described in Section II, Paragraphs 12-15 and Section III, Paragraph 2 of the Notice, which occurred on April 23, 2020 and March 13, 2021. DEQ is using its enforcement discretion to assess a separate civil penalty for each occurrence of the violation.

\$18,000 per violation x two occurrences of the violation equals a total civil penalty of \$36,000.

### EXHIBIT 3

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

- VIOLATION No. 3: Failing to timely notify DEQ of excess emissions events, in violation of Conditions 43.a and 43.b of the Permit.
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(g).
- 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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V permit.
- "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 initially receives a value of 27 according to OAR 340-012-0145(2)(a)(C) and (D). Respondent has: 20 Class II violations in case no. AQ/V-NWR-2009-204 issued April 5, 2010; 18 Class II violations in case no. AQ/V-NWR-2011-092, issued on August 31, 2011; three Class II violations in case no. AQ/V-NWR-2012-046 issued on October 1, 2012 and one Class II violation in case no. AQ/V-NWR-2013-068, which were combined into a single Mutual Agreement and Final Order that became final on July 23, 2013; two Class II violations in case no. AQ/V-NWR-2019-016; one Class I and four Class II violations in case no. AQ/V-NWR-2019-260, issued on January 24, 2020; and three Class II violations in case no. AQ/V-NWR-2020-042, issued on March 19, 2020. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P will not exceed 10.
- "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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to notify DEQ within one hour of the April 23, 2020 excess emissions event as required by Condition 43.a of the Permit. Respondent failed to notify DEQ within one hour of the March 16, 2021 excess emissions event as required by



Condition 43.a of the Permit. Respondent failed to submit an excess emissions report for the March 16, 2021 excess emissions report to DEQ within 15 days of the excess emissions event as required by Condition 43.b of the Permit.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent was cited for failing to timely report 20% opacity events to DEQ in Case No. AQ/V-NWR-2019-260 and Case No. AQ/V-NWR-2020-042. Therefore, Respondent was aware of the requirement, yet failed to ensure that either of the April 23, 2020 or the March 16, 2021 opacity exceedances were timely reported to DEQ.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to minimize the effects of the violation. Respondent reported the April 23, 2020 opacity event to DEQ at 5:30 p.m. on April 23, 2020, and followed up with a written excess emissions report dated May 7, 2020. Respondent reported the March 13, 2021 excess emissions event to DEQ by including information relating to the event in its quarterly opacity monitoring report submitted to DEQ on April 29, 2021. Respondent submitted a written excess emissions report for the March 16, 2021 20% opacity exceedance to DEQ on May 25, 2021.

"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 because the economic benefit is de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$3,000 + [(0.1 x \$3,000) x (10 + 0 + 2 + 4 + -2)] + \$0  
= \$3,000 + (\$300 x 14) + \$0  
= \$3,000 + \$4,200 + \$0  
= \$7,200