



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

January 21, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 2544

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. WQ-SW-NWR-2021-505

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 \$15,701 for failing to monitor your industrial stormwater discharge as required under the NPDES 1200-Z General Permit for your glass manufacturing facility located at 9710 NE Glass Plant Road in Portland, Oregon. Specifically, you failed to monitor on three occasions during the 2019-2020 monitoring year for statewide benchmark pollutants and Total Iron, an impairment pollutant. You also failed to monitor on one occasion during the 2020-2021 monitoring year for Total Oil & Grease.

DEQ issued this penalty because monitoring is an important requirement of the Permit. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows Permit registrants to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in industrial stormwater discharges.

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.oregon.gov

Via fax – 503-229-6762

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 online via e-check (ACH) by following the instructions on the enclosed payment slip and logging in to Your DEQ Online here: <https://ydo.oregon.gov>. If you pay by check or money order, please include the enclosed payment slip with your payment.

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: Daniel Riemenschneider, Plant Manager, Owens-Brockway Glass Container, Inc.
(Dan.Riemenschneider@o-i.com)
John Cayton, Senior Environmental Attorney, Owens-Brockway Glass Container, Inc.
(John.Cayton@o-i.com)
Geoff Tichenor, Stoel Rives LLP, Attorney for Owens-Brockway Glass Container, Inc.
(geoffrey.tichenor@stoel.com)
Jess Aloisio, City of Portland (Jessica.Aloisio@portlandoregon.gov)
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 OWENS-BROCKWAY GLASS) NOTICE OF CIVIL PENALTY
5 CONTAINER, INC.,) ASSESSMENT AND ORDER
6 a Delaware corporation, Respondent.) CASE NO. WQ-SW-2021-505

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
10 and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is registered under the National Pollutant Discharge Elimination System
13 Stormwater Discharge General Permit No. 1200-Z (the Permit) for its glass manufacturing facility
14 located at 9710 NE Glass Plant Road in Portland, Oregon (the Facility).

15 2. Respondent's Facility discharges stormwater to the Columbia Slough.

16 3. The Permit was in effect at all material times.¹

17 4. Schedule B.1.a of the Permit requires Respondent to monitor for the benchmark pollutants
18 identified in Schedule A.9 of the Permit: Total Copper, Total Lead, Total Zinc, pH, Total Suspended
19 Solids (TSS), Total Oil & Grease, E. Coli, BOD₅ and Total Phosphorus.

20 5. Schedule B.1.b of the Permit requires Respondent to monitor for the impairment pollutants
21 Total Iron and BOD₅, which are identified in Respondent's Permit Assignment Letters, dated August
22 30, 2017 and October 23, 2018.

23 6. Schedule B.2.c of the Permit requires Respondent to monitor at each discharge point unless
24 the discharge point serve an area without exposure of stormwater to industrial activities; or the
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27 ¹ References to the "Permit" in this Notice refer to the 1200-Z permit (October 22, 2018 Reissuance) in effect through June 30, 2021. The 1200-Z permit was renewed effective July 1, 2021.

1 monitoring point has been determined, according to Schedule B.2.c.ii, to have substantially similar
2 effluent to another monitored discharge point.

3 7. Schedule B.2.f of the Permit requires registrants to monitor for benchmark pollutants and
4 impairment pollutants, where there is no approved monitoring wavier, at a frequency of four times per
5 monitoring year (July 1 through June 30), with two samples before December 31 and two samples after
6 January 1.

7 8. Respondent has five (5) monitored discharge points, known as monitoring points (MP) 002,
8 004, 005, 006 and 008, and included in Respondent's Stormwater Pollution Control Plan (SWPCP).
9 Respondent added MP 008 to the SWPCP on November 15, 2019.

10 9. During the 2019-2020 monitoring year:

11 a. At MP 002, Respondent had an approved monitoring wavier for for all of the benchmark
12 and impairment pollutants except E. Coli, Total Phosphorus, and Total Iron.

13 b. Respondent monitored its stormwater discharge from MP 002 for E. Coli, Total
14 Phosphorus and Total Iron on the following days: November 19, 2019, December 13, 2019 and
15 April 1, 2020.

16 c. At MP 006, Respondent had an approved monitoring wavier for all of the benchmark
17 and impairment pollutant except TSS, E. Coli, and Total Iron.

18 d. Respondent monitored its stormwater discharge from MP 006 for TSS, E. Coli, and
19 Total Iron on the following days: November 19, 2019, December 20, 2019 and April 1, 2020.

20 e. Respondent did not have any approved monitoring waivers for MP 008.

21 f. Respondent monitored its stormwater discharge from MP 008 for all of the required
22 benchmark and impairment pollutants on the following days: December 20, 2019 and April 1,
23 2020.

24 g. There was sufficient rainfall to generate four discharges at MP 002 and four discharges
25 at MP 006 during the 2019-2020 monitoring year; there was sufficient rainfall between
26 November 15, 2019 and June 30, 2020 to generate three discharges at MP 008.

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1 10. During the 2020-2021 monitoring year:

2 a. At MP 008, Respondent did not have a monitoring waiver for Total Oil & Grease.

3 b. Respondent collected five samples at MP 008 on November 18, 2020, December 21,
4 2020, January 8, 2021, February 3, 2021 and March 22, 2021.

5 c. Two of those samples, collected on December 21, 2020 and January 8, 2021, were not
6 analyzed for Total Oil & Grease.

7 III. CONCLUSIONS

8 1. Respondent violated ORS 468B.025(2) and Schedule B.2.f of the Permit by failing to collect
9 monitoring data on three occasions during the 2019-2020 monitoring year, as described in Section II,
10 Paragraphs 1-9 above. Specifically, Respondent failed to monitor for E. Coli, Total Phosphorus and
11 Total Iron at MP 002 on one out of the required four occasions during the 2019-2020 monitoring year;
12 Respondent failed to monitor for TSS, E. Coli and Total Iron at MP 006 on one out of the required four
13 occasions during the 2019-2020 monitoring year; and Respondent failed to monitor for all of the
14 required benchmark and impairment pollutants at MP 008 on one out of the required three occasions
15 during the 2019-2020 monitoring year. These are Class I violations according to OAR 340-012-
16 0055(1)(o). DEQ hereby assesses a \$8,847 civil penalty for these violations.

17 2. Respondent violated ORS 468B.025(2) and Schedule B.2.f of the Permit by failing to collect
18 monitoring data on one occasion during the 2020-2021 monitoring year, as described in Section II,
19 Paragraphs 1-8 and 10 above. Specifically, Respondent failed to monitor for Total Oil & Grease at MP
20 008 on one out of the required four occasions during the 2020-2021 monitoring year. This is a Class I
21 violation according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$6,854 civil penalty for this
22 violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$15,701. The determination of the civil penalties are attached as
5 Exhibits 1 and 2 and are incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, please pay the penalty
7 online via e-check (ACH) by following the instructions on the attached payment slip and logging in to
8 Your DEQ Online here: <https://ydo.oregon.gov>. Alternatively, if you pay by check or money order, please
9 make checks payable to “Department of Environmental Quality” and include the attached payment slip
10 with your payment.

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

12 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
13 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
14 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
15 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
16 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
17 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
18 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
19 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
20 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
21 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
22 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
23 you may represent yourself. If you are a corporation, partnership, limited liability company,
24 unincorporated association, trust or government body, you must be represented by an attorney or a duly
25 authorized representative, as set forth in OAR 137-003-0555.

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1 Active duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll free telephone number.

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

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14
15 11/21/2022
Date

Kieran O'Donnell
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 Failing to collect monitoring data during the 2019-2020 monitoring year in violation of ORS 468B.025(2) and Schedule B.2.f of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has a NPDES General 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 receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has three Class I violations in case no. WQ/SW-NWR-2017-198, issued on January 16, 2018 and one Class I violation in case no. WQ/SW-NWR-2015-036, issued on March 12, 2015.

"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 was more than one but less than seven occurrences of the violation. Respondent failed to collect monitoring data on three occasions during the 2019-2020 monitoring year. Specifically, during the 2019-2020 monitoring year, Respondent failed to monitor at MP 002 on one out of the required four occasions, at MP 006 on one out of the required four occasions, and at MP 008 at one out of the required three occasions. Thus, there were three occurrences of a missed monitoring violation during the 2019-2020 monitoring year.

"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. According to OAR 340-012-

0030(15), negligent means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent knows that stormwater monitoring is required under the 1200-Z permit because Respondent has received previous formal enforcement actions for failure to monitor its stormwater discharge. By failing to take steps to ensure that the required number of samples were collected at each monitoring point, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in stormwater monitoring violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"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 \$447. This is the amount Respondent gained by avoiding spending \$574 in laboratory costs associated with the missed samples. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (5 + 0 + 2 + 4 + 0)] + \$447
= \$4,000 + (\$400 x 11) + \$447
= \$4,000 + \$4,400 + \$447
= \$8,847

EXHIBIT 2

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

VIOLATION NO. 2 Failing to collect monitoring data during the 2020-2021 monitoring year in violation of ORS 468B.025(2) and Schedule B.2.f of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent has a NPDES General 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 receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has three Class I violations in case no. WQ/SW-NWR-2017-198, issued on January 16, 2018 and one Class I violation in case no. WQ/SW-NWR-2015-036, issued on March 12, 2015.

"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)(a) because there was only one occurrence of the violation. Respondent failed to collect monitoring data for oil and grease at MP 008 on one occasion during the 2020-2021 monitoring year.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because respondent had constructive knowledge (reasonably should have known) of the requirement. As a Permit registrant, Respondent should be aware of the monitoring requirements in the permit. Although the laboratory dropped the December 21, 2020 sample, the lab notified Respondent on the same day and Respondent did not take

another sample in 2020. Respondent took an extra sample during 2021, but did not have that sample analyzed for Total Oil & Grease.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"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 \$54. This is the amount Respondent gained by avoiding spending \$71 in laboratory costs associated with the missed samples. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (5 + 0 + 0 + 2 + 0)] + \$54 \\ &= \$4,000 + (\$400 \times 7) + \$54 \\ &= \$4,000 + \$2,800 + \$54 \\ &= \$6,854 \end{aligned}$$