



# 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 24, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3220

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-2019-260

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$46,800 for air quality violations at your facility at 9710 NE Glass Plant Road, Portland, Oregon.

Specifically, you exceeded the 20 percent opacity limit in your Title V Operating Permit on March 30, 2019 and August 7, 2019. Opacity is an indicator of particulate matter emission levels. Particulate matter, when emitted in excess, can contribute to respiratory distress in people. Once inhaled, particulate matter can affect the heart and lungs, causing serious health problems such as decreased lung function, irregular heartbeat and chronic bronchitis.

In addition, you violated a DEQ order that required you to conduct a series of source tests, which you completed in May 2019. Specifically, you failed to conduct the Furnace A source test for particulate matter at a sufficiently high operating rate to demonstrate compliance with the emissions limits for that pollutant. DEQ needs reliable source test data to understand particulate matter emissions from your facility and to be able to appropriately regulate the source to reduce associated health risks.

DEQ appreciates your efforts to conduct the May 2019 source tests, but is concerned by some of the test results. Namely, total particulate matter emissions from Furnace D was very close to the permitted limit. In addition, emissions of both sulfur dioxide and lead were significantly higher than the emission factors in your permit. Finally, the opacity data recorded during the May 2019 source tests indicates that the current opacity value—above which you report excess emission to DEQ and EPA—is higher than it should be. Thus, DEQ is requiring you to gather more data to verify the emission rates of these pollutants from your facility and to reset your opacity values.

Included in Section IV of the enclosed Notice of Civil Penalty Assessment and Order (Notice) is an order requiring you to:

- Within 30 days of the order becoming final by operation of law or on appeal, determine a new opacity value for Furnace D, based on your May 2019 source test data. Once approved by DEQ, report all exceedances of the updated opacity value to DEQ and EPA as excess emissions.
- Within 90 days of the order becoming final by operation of law or on appeal, conduct source testing for each of the glass melting furnaces, A and D, for the following air contaminants: particulate matter, sulfur dioxide and lead. DEQ understands that Furnace D is currently shut down. If the 90 day deadline cannot be met for Furnace D, the order allows you to conduct Furnace D source testing as soon as practicable but no later than 30 days after restarting Furnace D.
- Within 30 days of receiving DEQ's source test review memorandum, determine new opacity values for Furnace A based on data from the source test required by this order. Once approved by DEQ, report all exceedances of the updated opacity value to DEQ and EPA as excess emissions.

Please note that the above is a summary of the order; you must consult Section IV or the Notice for the order's more detailed requirements.

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, which can offset a portion of the 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.

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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 Steele, Plant Manager, Owens-Brockway Glass Container, Inc., 9710 NE Glass Plant Road, Portland, OR 97220  
Dennis Buenger, Owens-Brockway Glass Container, Inc., 9710 NE Glass Plant Road, Portland, OR 97220  
John F. Cayton, Owens-Brockway Glass Container, Inc., One Michael Owens Way, Plaza One, Perrysburg, OH 43551  
George Yun, DEQ  
Thomas Rhodes, DEQ  
DEQ Business Office  
Donald Hendrix, AQ, DEQ  
US EPA, Region 10, c/o Katie McClintock, 1200 Sixth Avenue, Seattle, WA 98101



1           6. Condition 13 of the Permit requires Respondent to monitor visible emissions from GM1 and  
2 GM4 using a continuous opacity monitoring system (COMS) to demonstrate compliance with the 20%  
3 opacity limit described in Section II, Paragraph 5, above.

4           7. According to Respondent's compliance certifications and excess emissions reports  
5 submitted to DEQ:

6           a. Between 5:30 p.m. and 5:35 p.m. on March 30, 2019, the opacity reading for GM1 was  
7 equal to or greater than 20% for a period aggregating more than three minutes in one hour.

8           b. Between 12:12 a.m. and 12:23 a.m. on August 7, 2019, the opacity reading for GM4 was  
9 equal to or greater than 20% for a period aggregating more than three minutes in one hour.

10          8. Condition 49.a of the Permit requires Respondent to notify DEQ immediately (i.e. as soon  
11 as possible but in no case more than one hour after the beginning of an excess emission period) of all  
12 excess emissions from the Facility. According to Condition 49.a and OAR 340-214-0340(1),  
13 Respondent must submit a written report of the excess emissions event to DEQ within 15 days of the  
14 date of the event.

15          9. Respondent first notified DEQ of the March 30, 2019 excess emissions event on July 8,  
16 2019.

17          10. Respondent submitted a written report regarding the March 30, 2019 excess emissions event  
18 to DEQ on July 23, 2019.

19          11. On April 22, 2019, DEQ issued Notice of Civil Penalty Assessment and Order No. AQ/V-  
20 NWR-2019-016 (April 2019 Notice) to Respondent, assessing a civil penalty for two violations,  
21 occurring on June 28, 2017 and September 5, 2017, of the opacity limit described in Paragraph 6 of  
22 Section II.

23          12. Respondent did not appeal the April 2019 Notice within the time allowed and the April  
24 2019 Notice became final by operation of law on April 22, 2019 (Final Order).

25          13. Section IV, Paragraphs 3-6 of the Final Order require Respondent to conduct certain source  
26 tests and submit source test results to DEQ.

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1 14. More specifically, Section IV, Paragraph 3.a of the Final Order requires Respondent to:

2 “Conduct source testing for each of the glass melting furnaces, GM1 (both north and south  
3 stacks) and GM4, and submit source test results to DEQ to: demonstrate compliance with  
4 the 0.5 grams particulate matter (PM) per kilogram of glass produced (1 lbs PM/ton glass  
5 produced) limit in Condition 14 of the Permit (EPA Method 5); demonstrate compliance  
6 with the 0.10 grains per dry standard cubic foot PM limit in Condition 12 of the Permit  
7 (DEQ Method 5); and to verify the accuracy of the PM/PM<sub>10</sub> emission factor used to  
determine compliance with the Plant Site Emission Limit for PM/PM<sub>10</sub>, Condition 36 of the  
Permit (DEQ Method 5). The source testing must be conducted according to EPA Method 5,  
DEQ Method 5, and the DEQ Source Sampling Manual.”

8 15. The DEQ Source Sampling Manual, Section 2.9, page 6 states:

9 “For demonstrating compliance with an emission standard, the stack test must successfully  
10 demonstrate that a facility is capable of complying with the applicable standard under all  
11 normal operating conditions. Therefore, an owner or operator should conduct the source test  
12 while operating under typical worst-case conditions that generate the highest emissions. ...  
13 For existing equipment, emission units should operate at levels that equal or exceed ninety-  
14 percent (90%) of normal maximum operating rates. Furthermore, the process material(s) and  
fuel(s) that generate the highest emissions for the pollutant(s) being tested should be used  
during the testing.”

15 16. The DEQ Source Sampling Manual, Appendix A-1 states that “Unless defined by permit  
16 condition or applicable rule, normal maximum operating rate is defined as the 90th percentile of the  
17 average hourly operating rates during a 12 month period immediately preceding the source test.”

18 17. On May 20, 2019, Respondent conducted a source test for Furnace A (GM1) to demonstrate  
19 compliance with the PM emission limits in the Permit. The PM source test for Furnace A (GM1) was  
20 conducted at 88.3% of the normal maximum operating rate, defined as the 90<sup>th</sup> percentile of the average  
21 daily operating rates for Furnace A from May 1, 2018 through April 30, 2019.

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18. Table 1 shows Respondent's PM emissions measured during the May 15, 2019 (Furnace D) and May 20, 2019 (Furnace A) source tests, as compared to the Permit Limits for PM.

**Table 1. PM Emissions during May 2019 source tests**

	<b>Furnace A (GM1)</b>	<b>Furnace D (GM4)</b>	<b>Permit Limit</b>
Filterable PM	0.38 lb PM/ton glass	0.63 lb PM/ton glass	1 lb PM/ton glass (Condition 14)
Total PM	0.032 gr/scf	0.12 gr/scf <sup>2</sup>	0.1 gr/scf (Condition 12)

19. Condition 17 of the Permit requires Respondent to report to the U.S. Environmental Protection Agency (EPA) and DEQ excess emissions that exceed an "Opacity Value" corresponding to the 99 percent upper confidence level of a normal distribution of 6-minute average opacity values measured during a previous PM source test. Respondent's "Opacity Values," based on a previous PM source test, are 19.4% for the south stack of Furnace A (GM1), 20.0% for the north stack of Furnace A (GM1) and 10.1% for Furnace D (GM4).

20. During the PM source tests conducted on May 15, 2019 (Furnace D) and May 20, 2019 (Furnace A), Respondent measured opacity with its continuous opacity monitoring system (COMS). The 6-minute average opacity values recorded during the source test were as follows:

**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" per Condition 17 of the Permit</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%

<sup>2</sup> Under the rounding conventions in DEQ's Source Sampling Manual, this value is rounded to 0.1 gr/scf (the same number of significant figures as the Permit Limit). Therefore, this is not a violation of the Condition 12 emissions limit under the Permit. However, the same result would be a violation under Condition 14 of the Renewal (0.10 gr/scf) issued on December 10, 2019.

21. Paragraph 3.b of the Final Order requires Respondent to conduct source testing for sulfur dioxide (SO<sub>2</sub>) on both glass melting furnaces, GM1 and GM4.

22. Respondent conducted source testing for SO<sub>2</sub> on Furnace A (GM1) on May 20, 2019 and on Furnace D (GM4) on May 15, 2019. The SO<sub>2</sub> test results as compared to the SO<sub>2</sub> emission factors in the Permit and the Renewal are listed in Table 3, below.

**Table 3. SO<sub>2</sub>**

	<b>SO<sub>2</sub> Average</b> (May 2019 source tests)	<b>SO<sub>2</sub> Emission Factor</b> (Permit Condition 37.b)	<b>SO<sub>2</sub> Emission Factor</b> (Renewal Condition 33.b.ii)
Furnace A (GM1)	3.23 lb/ton glass	1.5 lb/ton glass	2.1 lb/ton glass
Furnace D (GM4)	3.1 lb/ton glass	1.8 lb/ton glass	2.1 lb/ton glass

23. Paragraph 3.h of the Final Order requires Respondent to conduct source testing for lead on both glass melting furnaces, GM1 and GM4.

24. Respondent conducted source testing for lead on Furnace A (GM1) on May 21-23, 2019, and on Furnace D (GM4) on May 16-17, 2019. The lead test results compared to the lead emission factors in the Permit and the Renewal are listed in Table 4, below.

**Table 4. Lead**

	<b>Lead Average</b> (May 2019 source tests)	<b>Lead Emission Factor</b> (Permit Condition 37.b)	<b>Lead Emission Factor</b> (Renewal Condition 33.b.ii)
Furnace A (GM1)	4.15 x 10 <sup>-3</sup> lbs/ton glass	1.65 x 10 <sup>-3</sup> lbs/ton glass	1.65 x 10 <sup>-3</sup> lbs/ton glass
Furnace D (GM4)	6.50 x 10 <sup>-3</sup> lbs/ton glass	1.65 x 10 <sup>-3</sup> lbs/ton glass	1.65 x 10 <sup>-3</sup> lbs/ton glass

### III. CONCLUSIONS

1. On the dates and for the durations listed in Section II, Paragraphs 7.a and 7.b above, Respondent violated Condition 11 of the Permit and ORS 468A.045(2) by causing or allowing opacity levels from the Facility's glass melting furnaces to be equal to or greater than 20% opacity for a period aggregating more than three minutes in one hour. These are Class II violations, according to OAR 340-012-0054(2)(d). DEQ hereby assesses a \$31,200 civil penalty for these violations.



1 4. Pursuant to ORS 468A.070 and OAR 340-212-0120(1)(a) and (b), within 90 calendar days of  
2 this order becoming final by operation of law or on appeal:

- 3 a. Conduct source testing for each of the glass melting furnaces, Furnace A (GM1, both  
4 north and south stacks) and Furnace D (GM4) to demonstrate compliance with the 0.5  
5 grams particulate matter (PM) per kilogram of glass produced (1 lbs PM/ton glass) limit  
6 in Condition 12 of the Renewal (EPA Method 5) and demonstrate compliance with the  
7 0.10 grains per dry standard cubic foot PM limit in Condition 14 of the Renewal (DEQ  
8 Method 5). The source testing must be conducted according to EPA Method 5, DEQ  
9 Method 5, and the DEQ Source Sampling Manual. Opacity must be measured and  
10 recorded using the COMS during the PM source tests.
- 11 b. Conduct source testing for each of the glass melting furnaces, Furnace A (GM1, both  
12 north and south stacks) and Furnace D (GM4) to verify the accuracy of the SO<sub>2</sub> emission  
13 factors in Condition 33.b.ii of the Renewal. The source testing must be conducted  
14 according to EPA Method 6C and the DEQ Source Sampling Manual.
- 15 c. Conduct source testing for each of the glass melting furnaces, Furnace A (GM1, both  
16 north and south stacks) and Furnace D (GM4) to verify the accuracy of the lead  
17 emission factors in Condition 33.b.ii of the Renewal. The source testing must be  
18 conducted using EPA Method 29, in accordance with the DEQ Source Sampling  
19 Manual.

20 5. Notwithstanding the 90 day deadline in Section IV, Paragraph 4, Respondent may complete the  
21 Furnace D (GM4) source tests as soon as practicable but no later than 30 days after restarting Furnace D.  
22 This provision does not affect the 90 day deadline for Furnace A.

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1           6. For each of the source tests required under Section IV, Paragraphs 4.a-4.c, above, a source  
2 test plan must be submitted to DEQ by no later than 30 days prior to the source tests. The source test  
3 plan must include hourly production data for each furnace for the previous twelve months. Data must  
4 include glass production, recycled-to-raw material ratios (% cullet), natural gas usage, electric boost  
5 rate, bridgewall temperature, and any other production data deemed necessary by DEQ to evaluate  
6 typical worst-case conditions that generate the highest emissions.

7           7. For each of the source tests required under Section IV, Paragraphs 4.a-4.c, above, the source  
8 test report must be submitted to DEQ within 45 days of completing the tests.

9           8. Within 30 days of receiving DEQ's source test memorandum regarding the source testing  
10 for Furnace A (GM1) described in Paragraph 4 of Section IV, if the source test demonstrates  
11 compliance with the emissions limits in the Renewal, determine new Opacity Values for Furnace A  
12 (GM1), both north and south stacks, corresponding to the 99 percent upper confidence level of a normal  
13 distribution of all of the average 6-minute average opacity values measured during the PM source test  
14 described in Paragraph 4.a of Section IV and submit the Opacity Values along with the underlying  
15 analysis to DEQ for review and approval.

16           9. Once the Opacity Values described in Section IV, Paragraph 8 are approved by DEQ, report  
17 all exceedances of the Opacity Values to DEQ and EPA according to Condition 16 of the Renewal.

18           10. Opacity Values and analysis required under Section IV, Paragraphs 2 and 8 must be  
19 submitted to George Yun, Oregon Department of Environmental Quality, 700 NE Multnomah Street,  
20 Suite 600, Portland OR 97232 or [Yun.George@deq.state.or.us](mailto:Yun.George@deq.state.or.us).

21           11. Source test plans and source test results required under Section IV, Paragraphs 6 and 7 must  
22 be submitted to Thomas Rhodes, Oregon Department of Environmental Quality, 700 NE Multnomah  
23 Street, Suite 600, Portland OR 97232 or [Rhodes.Thomas@deq.state.or.us](mailto:Rhodes.Thomas@deq.state.or.us).

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

25           You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
26 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
27 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached

1 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
2 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
3 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
4 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
5 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
6 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
7 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
8 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
9 you may represent yourself. If you are a corporation, partnership, limited liability company,  
10 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
11 authorized representative, as set forth in OAR 137-003-0555.

12 Active duty Service members have a right to stay proceedings under the federal Service  
13 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
14 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
15 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
16 Department does not have a toll free telephone number.

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

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26 1/24/2020  
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: Respondent violated Condition 11 of the Permit and ORS 468A.045(2) by causing or allowing opacity levels from the Facility's glass melting furnaces to be equal to or greater than 20% opacity for a period aggregating more than three minutes in an hour.

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 22 according to OAR 340-012-0145(2)(a), because Respondent has 20 Class II violations in case no. AQ/V-NWR-2009-204 issued April 5, 2010 and 18 Class II violations in case no. AQ/V-NWR-2011-092. In addition, Respondent has 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. Respondent also has two Class II violations in case no. AQ/V-NWR-2019-016. 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. In accordance with 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 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Negligent means respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a

violation. Respondent's Permit expressly prohibits opacity levels of 20% or greater for a period aggregating more than three minutes in an hour. The opacity violations described in Section II, Paragraphs 5-7 of the Notice were due to mechanical or process failures. By failing to adequately address these mechanical or process failures to avoid opacity violations, Respondent failed to take reasonable care to avoid a foreseeable risk of violating its Permit.

"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 \$0 because DEQ has insufficient information to calculate an economic benefit associated with these violations.

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 (10 + 0 + 0 + 4 + 2)] + \$0  
= \$6,000 + (\$600 x 16) + \$0  
= \$6,000 + \$9,600 + \$0  
= \$15,600

Respondent has two Class II, major magnitude violations as described in Section II, Paragraphs 5-7 of the Notice, which occurred on March 30, 2019 and August 7, 2019. DEQ is using its enforcement discretion to assess a separate civil penalty for each occurrence of the violation of Permit Condition 11 (opacity levels equal to or greater than 20% opacity for a period aggregating more than three minutes in an hour) that also violated the 20% opacity limit, as measured by the 6-minute averaging method in OAR 340-208-0110 (and as measured under Condition 17 of the Renewal). Respondent has two such opacity violations. Specifically, using the six-minute averaging method, on March 30, 2019, the opacity for GM1 was 20.6% between 5:30 p.m. and 5:35 p.m. Using the six-minute averaging method, on August 7, 2019, the opacity for GM4 was 21.7% between 12:12 a.m. and 12:17 a.m. and 27.1% between 12:18 a.m. and 12:23 a.m.

\$15,600 per violation x two occurrences of the violation equals a total civil penalty of \$31,200.

EXHIBIT 2

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

VIOLATION No. 3: Violating a requirement in a DEQ Final Order, Case No. AQ/V-NWR-2019-016.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).

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)(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 22 according to OAR 340-012-0145(2)(a), because Respondent has 20 Class II violations in case no. AQ/V-NWR-2009-204 issued April 5, 2010 and 18 Class II violations in case no. AQ/V-NWR-2011-092. In addition, Respondent has 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. Respondent also has two Class II violations in case no. AQ/V-NWR-2019-016. 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)(a) because there was only one occurrence of the violation. Respondent violated Section IV, Paragraph 3.a of the Final Order in Case No. AQ/V-NWR-2019-016 by failing to conduct the Furnace A (GM1) PM source test according to the DEQ Source Sampling Manual.

"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 respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent's PM source test conducted on Furnace A was among the source tests that Respondent conducted in direct response to the Final Order in Case No. AQ/V-NWR-2019-016. Thus, Respondent had actual knowledge of the requirements of that Final Order. Moreover, the requirement in the DEQ Source Sampling Manual to test for compliance with emission limits when operating at or above 90% of the normal maximum operate is a well-established and well-understood source testing requirement. Respondent submitted a source test plan to DEQ on May 7, 2019 which states in Section 2.3 that: "Emission test will be performed while the source/units and air pollution control devices are operating at the conditions required by the Permit. The units will be tested when operating normally." Condition 38 of the Permit requires Respondent to conduct source testing in accordance with DEQ's Source Sampling Manual unless otherwise specified in the Permit. There are no such other requirements in the Permit with respect to process conditions for source testing. On May 13, 2019, DEQ approved the source test plan by letter, stating in Condition 8 of the approval that: "Source testing should be done at the highest achievable operating rate but shall not be less than 90% of the [normal] maximum operating rate." Thus, Respondent was further informed of the requirement prior to conducting the test in DEQ's approval letter. By failing to conduct the Furnace A (GM1) PM source test at a sufficiently high operating rate to demonstrate compliance with the Permit's PM limits, Respondent failed to take reasonable care to a foreseeable risk of violating a requirement of the Final Order.

"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 \$0 because DEQ has insufficient information to calculate an economic benefit associated with this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 0 + 4 + 2)] + \$0$   
 $= \$6,000 + (\$600 \times 16) + \$0$   
 $= \$6,000 + \$9,600 + \$0$   
 $= \$15,600$