



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 16, 2018

CERTIFIED MAIL: 7016 2140 0000 2409 6035

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-2017-198

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,000 for violating the conditions of National Pollutant Discharge Elimination System 1200COLS General Permit by failing to monitor your stormwater discharge at your facility located at 9710 N.E. Glass Plant Road in Portland. Specifically, you failed to analyze a sample of your stormwater discharge prior to December 31, 2016 for iron. DEQ appreciates that you analyzed an additional sample for iron after December 31st and considered this when calculating the penalty.

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

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you. 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 to the above address. The attached Notice details DEQ's reasons for issuing the penalty and provides instructions for appealing. Please refer to it when discussing this case with DEQ.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/administrative-rules.aspx>. DEQ may allow you to resolve part of your penalty through the completion of an environmental improvement project. More information is available by calling the number below or at <http://www.oregon.gov/deq/regulations/pages/sep.aspx>.

If you have any questions, please contact Susan Elworth at 503-229-5152 or at 800-452-4011 ex 5152.

Sincerely,

Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement
Enclosures

cc: Laura Johnson, City of Portland BES, 6543 N. Burlington Avenue, Portland OR 97203
Shaumae Hall, Accounting, DEQ
John Koestler, WQ, 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
CONTAINER, INC.,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/SW-NWR-2017-198

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. On August 20, 2012, DEQ assigned Respondent coverage under the National Pollutant
13 Discharge Elimination System Stormwater Discharge General Permit Number 1200-COLS (the
14 Permit), which was effective from October 1, 2011 to September 30, 2016. The Permit was renewed
15 on November 3, 2016 and was effective through September 30, 2017.

16 2. The Permit authorizes Respondent to discharge stormwater from Respondent's facility
17 located at 9710 N.E. Glass Plant Road in Portland, Oregon, only in conformance with the Permit.

18 3. Schedule B, condition 1 of the Permit requires Respondent to sample for the benchmark
19 pollutants identified in Schedule A.9 and the impairment pollutants identified in the permit assignment
20 letter according to the schedule set forth in Table 4 of Schedule B of the Permit. Specifically, the
21 Permit requires Respondent to collect and analyze its stormwater discharge for iron, an impairment
22 pollutant, once on or before December 31st and once on or after January 1st each monitoring year.

23 4. According to Respondent's discharge monitoring report for monitoring year 2016-2017,
24 Respondent analyzed samples of its stormwater discharge for iron from outfalls 4 and 5 on April 13,
25 2107 and May 5, 2017, and outfall 6 on May 5, 2017 only.
26
27

1 III. CONCLUSIONS

2 Respondent violated ORS 468B.025(2) and Schedule B, Table 4 of the Permit by failing to
3 monitor its stormwater discharge at least once on or before December 31, 2016 for iron. These are Class
4 I violations according to OAR 340-012-0055(1)(o). DEQ assesses a \$6,000 civil penalty for these
5 violations.

6 IV. ORDER TO PAY CIVIL PENALTY

7 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
8 hereby ORDERED TO pay a total civil penalty of \$6,000. The determination of the civil penalty is
9 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
10 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
11 **State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**
12 **Portland, Oregon 97232**. Once you pay the penalty, the Notice become final.

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

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

1 Active duty service-members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
5 <http://legalassistance.law.af.mil/content/locator.php>.

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.

12
13
14
15 January 16, 2018
16 Date

15 Sarah Wheeler
16 Sarah G. Wheeler, Acting Manager
17 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 1: Failing to monitor its stormwater discharge at least once on or before December 31, 2016 for iron, in violation of ORS 468B.025(2) and Schedule B, Table 4 of the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0-0055(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). Respondent has coverage under an 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has one Class I violation in case no. WQ/SW-NWR-2015-028, issued 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 were three occurrences of the violation. Respondent failed to analyze one sample for iron prior to December 31, 2016 from three separate outfalls.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The monitoring requirements are expressly set forth in the Permit. When Respondent failed to ensure that samples were analyzed for iron prior to December 31, 2016, it failed to take reasonable care to avoid the foreseeable risk that it would violate the Permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Respondent analyzed additional samples after December 31st from two of the three outfalls.

"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 as any amount Respondent gained by delaying spending money to analyze samples until after December 31, 2016 would be de minimis.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (2 + 0 + 2 + 4 - 3)] + \$0 \\ &= \$4,000 + [\$400 \times 5] + \$0 \\ &= \$4,000 + \$2,000 + \$0 \\ &= \$6,000 \end{aligned}$$