



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
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TTY 711

October 27, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 6476

Bullseye Glass Co.
c/o TT Administrative Services, LLC, Registered Agent
888 SW 5th Ave Ste 1600
Portland OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-NWR-2021-077

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 \$6,600 for failing to accurately determine whether all of the wastes you generated were hazardous wastes. Additionally, DEQ has cited you, without penalty, for other violations of hazardous waste regulations in the enclosed Notice of Civil Penalty Assessment and Order (Notice).

DEQ issued this penalty because accurately characterizing hazardous wastes is the cornerstone of safely and legally managing hazardous wastes in order to protect the environment and public health. DEQ inspected your facility in 2019 and discovered one waste stream had not been completely and accurately analyzed, and identified four other hazardous waste violations. In 2020, DEQ investigated a complaint relating to disposal of waste bricks from your facility, and discovered that hazardous waste bricks from demolishing furnaces at the facility were not accurately characterized as hazardous waste.

DEQ appreciates your efforts to address the violations in August of 2020, and DEQ considered these efforts when determining the amount of civil penalty. Additionally, when Bullseye follows the new procedures for management and documentation as represented to DEQ in January 2021, the exemption from the definition of solid waste for reuse without reclamation or speculative accumulation (as provided in 40 CFR 261.2(e)(1)(ii)) can apply to the furnace bricks.

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 – 503-229-6762

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 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>.

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 Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jeremy Fleming, DEQ
Audrey O'Brien, DEQ
Accounting, DEQ
Geoffrey Tichenor, geoffrey.tichenor@stoel.com

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 BULLSEYE GLASS CO.,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/HW-NWR-2021-077

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 466.990, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
10 012, and 100-102.

11 II. FINDINGS OF FACT

12 1. Respondent operates a colored glass manufacturing business at 3722 SE 21st Avenue in
13 Portland, Oregon (the Facility).

14 2. Respondent generates at least 2,200 pounds of hazardous waste on a monthly basis at the
15 Facility. Since 2016, Respondent has reported annually to DEQ that the Facility is a large-quantity
16 generator of hazardous waste.

17 November 19, 2019 Inspection

18 3. On November 19, 2019, DEQ inspected the Facility.

19 4. During the November 19, 2019, inspection, Facility staff primarily responsible for
20 hazardous waste management at the Facility stated to DEQ that Respondent had not made a hazardous
21 waste determination for the parts washer solution used in the maintenance area parts washer.

22 a. From 2016 to 2019, Respondent occasionally used solvents containing
23 tetrachloroethylene or other halogenated solvents at the Facility, with the potential for those solvents to
24 contaminate the parts washer solution.

25 b. On March 13, 2019, Respondent shipped 30 gallons of spent parts washer solution,
26 containing tetrachloroethylene, off-site as hazardous waste.

27 ////

1 c. From 2016 through 2019, with the exception of the March 13, 2019 shipment,
2 Respondent managed and shipped spent parts washer solution off-site as non-hazardous waste.

3 d. From 2016 until March 20, 2020, Respondent did not analyze spent parts washer
4 solution for toxic metals when generated or when shipped off-site.

5 e. Respondent did not include the 30 gallons of hazardous waste spent parts washer
6 solution sent off-site March 13, 2019, in the 2019 Hazardous Waste Annual Report Respondent
7 submitted to DEQ. Respondent submitted a revised 2019 Hazardous Waste Annual Report for 2019,
8 including reporting the generation of this hazardous waste spent parts washer solution, to DEQ on April
9 29, 2020.

10 5. During the November 19, 2019, inspection, Respondent did not have a written job
11 description for employees that perform hazardous waste management duties at the Facility.

12 6. On November 19, 2019, Respondent's Contingency Plan for the Facility did not include all
13 emergency equipment at the facility, specifically, spill response equipment quantities and locations.

14 7. On November 19, 2019, Respondent had not submitted a current Facility Contingency Plan
15 to local police departments, fire departments, hospitals, and State and local emergency response
16 authorities.

17 August 2020 Investigation of Spent Brick Management

18 8. Respondent operates air pollution control devices (baghouses) that collect gas, which
19 contains metals including cadmium and lead, from the furnaces at the Facility. The furnaces each have
20 a "stack" made of bricks that convey the gas to the baghouse. Respondent routinely dismantles furnace
21 stacks at the Facility, generating stack bricks.

22 9. Some stack bricks from the dismantled furnaces are re-used to build new furnaces at the
23 Facility.

24 10. Between July 18, 2018 and November 2, 2019, Respondent dismantled eleven furnace
25 stacks at the Facility.

26 11. From at least July 18, 2018 through February 14, 2020, Respondent stored the dismantled
27 stack bricks that were not re-used at the Facility as non-hazardous waste.

1 12. On February 14, 2020, Respondent shipped 18,120 pounds of dismantled stack bricks as
2 hazardous waste to a permitted hazardous waste disposal facility.

3 13. Respondent did not document the re-use of 75%, by weight or volume, of the amount of
4 dismantled stack brick accumulated at the Facility in the beginning of calendar year 2019, by the end of
5 calendar year 2019.

6 III. CONCLUSIONS

7 Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the
8 following provisions of Oregon law, including hazardous waste laws adopted by OAR 340-100-0002.

9 1. Respondent violated OAR 340-102-0011(2) by failing to conduct a complete and accurate
10 hazardous waste determination on all residues, as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2,
11 that Respondent generated at the Facility. Specifically, as described in Paragraphs 4 and 8-13 of Section II
12 above, Respondent failed to determine whether spent parts washer solution and stack bricks were
13 hazardous waste when generated at the Facility. The spent parts washer solution described above was a
14 hazardous waste pursuant to 40 CFR 261.24(a) and (b), and as specifically identified by Environmental
15 Protection Agency (EPA) Hazardous Waste Number (EPA Waste No.) D039. The dismantled stack
16 brick was hazardous waste pursuant to 40 CFR 261.24(a) and (b), and as specifically identified by EPA
17 Hazardous Waste Numbers D006 and D008. The dismantled stack brick was accumulated speculatively
18 as defined in 40 CFR 261.1(c)(8), from approximately July 18, 2018 through February 14, 2020. Prior
19 to approximately January 2021, Respondent did not document that the dismantled stack brick was not a
20 solid waste as provided in 40 CFR 261.2(e) and (f). These are Class I violations, according to OAR 340-
21 012-0068(1)(a). DEQ hereby assesses a \$6,600 civil penalty for these violations.

22 2. Respondent violated OAR 340-102-0041(2) by failing to submit a complete and accurate
23 Hazardous Waste Annual Report for 2019, as described in Paragraphs 1-2 and 4.b and 4.e of Section II
24 above. This is a Class II violation, according to OAR 340-012-0053(2). DEQ has not assessed a civil
25 penalty for this violation.

26 3. Respondent violated 40 CFR 265.16(d)(2), as referenced by 262.34(a)(4), by failing to
27 maintain a written list of job duties for employees that perform hazardous waste management duties at the

1 Facility, as described in Paragraphs 2 and 5 of Section II above. This is a Class II violation, according to
2 OAR 340-012-0068(2)(l). DEQ has not assessed a civil penalty for this violation.

3 4. Respondent violated 40 CFR 265.52(e), as referenced by 40 CFR 262.34(a)(4), by failing to
4 maintain an updated list of all emergency equipment at the Facility, including the location of the
5 equipment, in Respondent's Contingency Plan, as described in Paragraphs 2 and 6 of Section II above.
6 This is a Class II violation, according to OAR 340-012-0068(2)(o). DEQ has not assessed a civil
7 penalty for this violation.

8 5. Respondent violated 40 CFR 265.53(b), as referenced by 40 CFR 262.34(a)(4), by failing to
9 provide a current contingency plan to local emergency response authorities, as described in Paragraphs 2
10 and 7 of Section II above. This is a Class III violation, according to OAR 340-012-0068(3)(e). DEQ has
11 not assessed a civil penalty for this violation.

12 IV. ORDER TO PAY CIVIL PENALTY

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

15 Pay a total civil penalty of \$6,600. The determination of the civil penalty is attached as Exhibit 1
16 and is incorporated as part of this Notice.

17 If you do not file a request for hearing as set forth in Section V below, please pay the penalty via
18 check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in
19 to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>.

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

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
24 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax

1 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
5 you may represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active duty Service members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
12 Department does not have a toll free telephone number.

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

19
20
21
22 10 / 27 / 2021
23 Date


24 
25 _____
26 Kieran O'Donnell, Manager
27 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 accurately determine if Respondent's residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR 340-100-0002) were hazardous waste, in violation of OAR 340-102-0011(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0068(1)(a).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make a hazardous waste determination on two hazardous waste streams: spent parts washer solution and speculatively-accumulated spent stack brick.

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a large quantity generator of hazardous waste and violated a hazardous waste rule.

"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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions in the same media.

"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 no prior history in the same media.

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(e) because DEQ is 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. Respondent is, and has been since at least 2016, a highly-regulated large quantity generator of hazardous waste. By failing to accurately determine whether two wastes Respondent generates at the Facility were hazardous, Respondent failed to take reasonable care to avoid this foreseeable risk of committing these violations.

"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. On June 5, 2019, Respondent submitted a hazardous waste determination to DEQ for the spent parts washer waste, and discontinued use of that mobile parts washer. In January of 2021, Respondent documented newly-developed procedures for properly managing and tracking spent bricks to ensure they will be accurately characterized.

"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 DEQ does not have sufficient information on which to make an estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 4 + (-3))] + \0
 $= \$3,000 + (\$300 \times 1) + \$0$
 $= \$3,000 + \$300 + \$0$
 $= \$3,300$

Pursuant to OAR 340-012-0145(4)(e), DEQ may assess separate penalties for each occurrence of a violation. Respondent committed two separate occurrences of this violation: 1) On or about November 2019, Respondent failed to characterize spent parts washer solution, and 2) Upon generation, which was ongoing from July 18, 2018, through November 2, 2019, Respondent failed to accurately characterize spent stack brick.

DEQ assesses one gravity-based penalty for each occurrence, for a total civil penalty of \$6,600.