BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Clean Air Act Title V Operating Permit No. 26-1876-TV-01	)	PETITION FOR OBJECTION
	)	
	)	Permit No. 26-1876-TV-01
For Owens-Brockway Glass Container Inc.	)	
	)	
Prepared by the Oregon Department of Environmental Quality	)	
	)	

PETITION TO OBJECT TO THE RENEWAL TITLE V OPERATING PERMIT FOR OWENS-BROCKWAY'S PORTLAND, OREGON CONTAINER GLASS MANUFACTURING PLANT

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Earthjustice, on behalf of Cully Air Action Team, Portland Clean Air, Oregon Environmental Council, and Verde, hereby respectfully petitions the Administrator of the U.S. Environmental Protection Agency ("EPA") to object to the above-referenced renewal Title V permit ("the Final Permit") prepared by the Oregon Department of Environmental Quality ("DEQ") for Owens-Brockway Glass Container, Inc.'s container glass manufacturing plant located at 9710 NE Glass Plant Road, Portland, Oregon 97220. This petition is based on issues raised in Petitioners' comments on the draft permit ("Draft Permit Comments," Attachment A), with the exception of issues noted below that arose after the close of the public comment period or that were otherwise impracticable to raise during the comment period. This petition is filed by the February 4, 2020 petition deadline identified in Oregon DEQ's permit issuance letter. (Attachment B)[1]

I. BACKGROUND

A. Petitioners

Cully Air Action Team is an organization of community members from Portland's Cully neighborhood that focuses on addressing ongoing air pollution and toxicity in that area.

Oregon Environmental Council is a non-profit organization that works to safeguard clean air, water and environmental health in Oregon.

Portland Clean Air is an organization that works to address industrial pollution in Multnomah and Washington Counties.

[1] Letter from Steven A. Dietrich, Oregon DEQ, to Plant Manager, Owens-Brockway Glass Container, Inc., dated Dec. 10, 2019 (Attachment B).

Verde is a non-profit organization based in Portland's Cully neighborhood that serves communities by building environmental wealth through social enterprise, outreach, and advocacy.

B. Permitting History

At issue in this petition is a renewal Title V permit issued for Owens-Brockway's Portland glass manufacturing plant on December 10, 2019 (Attachment C). Though this renewal should have occurred before the pre-existing Title V permit expired on January 1, 2012, Oregon DEQ did not release a draft renewal permit for public comment until August 15, 2018, with a public comment deadline of September 26, 2018. Upon Petitioners' request, DEQ extended the public comment deadline to October 26, 2018. Petitioners submitted comments to DEQ on the draft permit by the October 26, 2018 deadline. Petitioners also participated in the public hearing on the draft permit held on September 19, 2018. DEQ sent a proposed renewal permit to EPA for review on October 22, 2019. After EPA's 45-day review period expired without EPA's objection, DEQ issued the final renewal permit on December 10, 2019. The Final Permit conditions are identical to those in the Proposed Permit. All permit conditions identified below in connection with Petitioners' claims are set forth in the Final Permit issued on December 10, 2019.

C. Facility Background

The Owens-Brockway Glass Manufacturing Plant is a massive 78-acre facility that sits between three public schools in Portland's Cully neighborhood, which is overburdened by air pollution.[2] According to the most recent National Air Toxics Assessment based on 2014 data, the neighborhoods in closest proximity to the Owens-Brockway plant experience an elevated cancer risk of 40 in one million from air toxics (without accounting for diesel particulate matter and other air toxics for which EPA does not have health-effects data).[3] Cully is one of the most culturally diverse neighborhoods in Portland where more than 50 percent of residents represent communities of color.[4] More than a quarter of Cully residents are low income.[5] Given the concentration of environmental health risks in the area and the high percentages of Cully residents that are people of color or low-income, this neighborhood, which surrounds the Owens-

[2] Owens Brockway is located 0.8 miles from Helensview Alternative High School, 1.5 miles from Prescott Elementary, and 2.1 miles from Sacajawea Headstart.

[3] Environmental Protection Agency, 2014 National Air Toxics Assessment Map Application, https://gispub.epa.gov/NATA/ (last visited Oct. 23, 2018). *See also*, Oregon Sec'y of State Audits Div., *DEQ Should Improve the Air Quality Permitting Process to Reduce Its Permit Backlog and Better Safeguard Oregon's Air*, Report No. 2018-01 DEQ , at 2 (2018) ("DEQ Audit Report"), https://sos.oregon.gov/audits/documents/2018-01.pdf ("[O]f the 3,142 counties in the U.S., Multnomah, where Portland is located, ranks 56th for cancer risk and 3rd for non-cancer hazards.").

[4] The City of Portland Oregon, 2010 Census Data for Portland Neighborhoods, https://www.portlandoregon.gov/civic/article/375860.

[5] *See*, Oregon Department of Human Services, Office of Office of Forecasting, Research and Analysis, High Poverty Hotspots 1 – Portland Airport Area, Multnomah County, at 4, https://www.oregon.gov/dhs/business-services/ofra/Documents/High%20Poverty%20Hotspots%20Multnomah%20Portland%20Airport.pdf

Brockway facility, is considered an "overburdened community" as defined by EPA's Environmental Justice Guidance.[6]

Owens-Brockway uses a combination of raw materials (*e.g.*, sand, salt cake, limestone, soda ash) and recycled glass to produce amber colored beer bottles and green colored wine bottles. Permit Review Report at 6 (Attachment C).[7] While the facility has four continuous glass-melting furnaces, only two are operational. *Id.* These two furnaces are the main source of air pollution from Owens-Brockway. Public Notice of Draft Permit at 2 (Attachment D).[8]

Particularly troubling to the communities neighboring Owens-Brockway are the hazardous air pollutants emitted from the facility. State reports indicate that in 2016 Owens-Brockway emitted more than 400 pounds of lead, 22 pounds of arsenic, and 213 pounds of chromium.[9] The facility represents one of the largest sources of lead air pollution in Oregon.[10] Adverse health effects associated with ambient lead exposure include brain damage, reproductive problems, high-blood pressure, kidney disease and nervous disorders.[11] There is no known safe level of human exposure to lead.[12] Long-term arsenic exposure can result in developmental effects, diabetes, pulmonary disease, cancer and cardiovascular disease.[13] Exposure to chromium can cause respiratory problems like asthma and chronic bronchitis, as well as certain cancers, skin ulcers, and liver problems.[14]

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[6] *See* EPA, *EJ 2020 Action Agenda* at Appx. B (2016–2020), www.epa.gov/sites/production/files/2016-05/documents/052216_ej_2020_strategic_plan_final_0.pdf (defining Overburdened Community as "[m]inority, low-income, tribal, or indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.").

[7] Oregon DEQ, Title V Permit Review Report No. 26-1876-TV-01 for Owens-Brockway Glass Container Inc., Portland Plant, Application No. 025752, at 6 (Attachment C).

[8] Public Notice, DEQ Requests Comments on Owens-Brockway's Proposed Air Quality Permit, issued Aug. 15, 2018, at 1 (Attachment D).

[9] Rob Davis, *Why Oregon's New Clean Air Law May Not Clean the Air*, The Oregonian, Mar. 17, 2018, https://www.oregonlive.com/environment/index.ssf/2018/03/why_oregons_new_clean_air_law.html.

[10] Environmental Protection Agency, The 2014 National Emissions Inventory, Maps and Fusion Tables, https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data (last visited Oct. 23, 2018).

[11] Environmental Protection Agency ("EPA"), *Basic Information About Lead Air Pollution*, https://www.epa.gov/lead-air-pollution/basic-information-about-lead-air-pollution#health (last visited Oct. 22, 2018).

[12] *See, e.g.,* World Health Org., Exposure to Lead: A Major Public Health Concern at 1 (2010), http://www.who.int/entity/ipcs/features/lead..pdf?ua=1.

[13] Young-Seoub Hong et. al, *Health Effects of Arsenic Exposure*, J Prev. Med. Public Health, 47(5) (Sept. 2014), at 245–252, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4186552/.

[14] Agency for Toxic Substances and Disease Registry, Public Health Statement Chromium, Sept. 2012, https://www.atsdr.cdc.gov/ToxProfiles/tp7-c1-b.pdf.

D. Post-Comment Period Compliance Testing, Investigation & Enforcement

Because the pre-existing Title V permit required Owens-Brockway to perform stack testing only "once per permit term," DEQ's lengthy delay in renewing the Title V permit meant that the facility was not required to perform stack testing for many years. In fact, it appears that as of the date that DEQ released the draft permit for public comment, the most recent stack testing for particulate matter was in 2006, and for hazardous air pollutants such as chromium was 2008. *See* Permit Review Report, Addendum: Furnace Test Results for PM & SO2 (listing most recent PM testing as being performed in 2006 (Attachment C); DEQ Response to Comments at 2 (describing prior hazardous air pollutant testing in 2008) (Attachment C).

On April 22, 2019, nearly seven months after the close of the public comment period on the draft permit, DEQ released a Notice of Civil Penalty Assessment and Order (the "2019 Penalty Order," Attachment E), which assessed a civil penalty of $13,900 for Owens-Brockway's repeated violation of the 20% opacity limit in Oregon's Clean Air Act State Implementation Plan ("SIP").[15] In the cover letter accompanying the 2019 Penalty Order, DEQ noted that Owens-Brockway had not provided DEQ with opacity data requested more than a month earlier, which DEQ needed to assess the facility's compliance with the 20% opacity standard on various dates between 2013 and 2018. 2019 Penalty Order, Cover Letter at 1 (Attachment E). DEQ noted that if that data confirmed violations, DEQ would potentially issue an additional penalty assessment on a future date. *Id.*

DEQ expressed concern in the cover letter to the 2019 Penalty Order regarding 83 instances in the prior two calendar years in which emissions from Furnace D exceeded the value that had been correlated with the furnace's compliance with the applicable particulate matter (PM) limit set forth in the Glass Manufacturing New Source Performance Standard ("NSPS") at 40 C.F.R. § 63.293(b)(1) (Final Permit Condition 12). 2019 Penalty Order, Cover Letter at 1. For Furnace D, the currently correlated opacity level is 10.1%. *Id.* DEQ noted that the facility's particulate matter emissions "contains Hazardous Air Pollutants, including the following metals: Arsenic, Cadmium, Chromium, Lead, Manganese, Nickel, and Selenium." *Id.* However, DEQ observed that under the facility's Title V permit, "these excess emissions are not violations." *Id.* Accordingly, the 2019 Penalty Order did not assess a penalty for NSPS violations and did not require corrective action designed to ensure that Furnace D's emissions did not continue to exceed the correlated opacity value. *Id.*

Aside from assessing a civil penalty for violations of the 20% opacity limit, DEQ's 2019 Penalty Order directed Owens-Brockway to undertake an array of actions, including performing source testing on each of the facility's glass melting furnaces within 90 days of the Order's finalization. Such testing was to include the following pollutants: PM, sulfur dioxide (SO2), nitrogen oxides (NOx), carbon monoxide (CO), volatile organic compounds (VOCs), formaldehyde, arsenic, cadmium, chromium, hexavalent chromium, lead, manganese, nickel, antimony, beryllium, cobalt, copper, mercury and selenium. *Id.* at 2. DEQ further ordered Owens-Brockway to prepare a written Corrective Action Plan designed to achieve and maintain

[15] Oregon DEQ, Notice of Civil Penalty Assessment and Order, Case No. AQ/V-NWR-2019-016, dated Apr. 22, 2019 (Attachment E, including cover letter).

compliance "with the opacity limit in Condition 11" of the facility's prior Title V permit, which set forth the 20% opacity limit from Oregon's SIP. *Id.*

Owens-Brockway performed the required source testing on May 15, 17, 20-23, 2019. Source Test Review Report (Attachment F). The Source Test Report identifies a number of reasons for why the testing results may not reflect the full amount of the facility's emissions, including:

- "Furnace D was not producing green glass with the greatest potential to emit chromium," Source Test Review Report at 19 (Owens-Brockway adds iron chromite to the production process to produce green glass, and it is the addition of iron chromite that triggers applicability of the Glass Manufacturing NESHAP at 40 CFR part 63, SSSSSS).
- The third of the three test runs did not meet the required testing protocol and thus was not counted in the test result averages. Source Test Review Report at 18.
- Though DEQ ordered that source testing "be done at the highest achievable operating rate" but "not less than 90% of the maximum operating rate," Furnace A "was only operating at 88.3% of the 90th percentile operating rate for the previous 12 month period" during the testing. Source Test Review Report at 18-19 (Notably, even through Furnace A was operated below 90% of its maximum operating rate, its compliance margin for the 1 lb PM/ton glass NSPS limit was razor thin—the test results show average PM emissions of 0.96 lb/ton glass. *Id.*, Table 1).
- "Percent cullet usage was higher during the testing on Furnace A and Furnace D than the average cullet rates during 2018." Source Test Report at 19.
- Several other variations from test method requirements. Source Test Review Report at 18.

Though the above flaws in the testing protocol likely resulted in underestimation of the facility's emissions, the test results nonetheless reveal compliance issues. DEQ identified these issues in a second Notice of Civil Penalty and Order released on January 24, 2020 ("2020 Penalty Order," Attachment G). That Order addressed not only additional violations of the 20% opacity limit from Oregon's SIP, but also Owens-Brockway's failure to test Furnace A at a sufficiently high operating rate to demonstrate compliance with the applicable PM standards. 2020 Penalty Order, Cover Letter at 1. In addition, DEQ explained that it "is concerned by some of the test results." *Id.*

The first concern DEQ raised regarding the May 2019 test results was that "total particulate matter emissions from Furnace D [were] very close to the permitted limit." *Id.* DEQ's characterization of this issue was generous—in reality, the PM limit in the then-existing Title V permit (based on a SIP requirement) was 0.1 gr/scf whereas the Furnace D test result was 0.12 gr/scf. 2020 Penalty Order at 4, ¶ 18. Thus, Owens-Brockway was considered in compliance with the PM limit only because DEQ's Source Sampling Manual instructed that the test result be rounded to the same number of significant figures as the applicable permit limit, *i.e.*, 0.1 gr/scf. 2020 Penalty Order at 4, n. 2. DEQ noted in the Order, however, that the December 2019 Final Permit revised the limit to 0.10 gr/scf, and that the "same result would be a violation" under the new Final Permit. *Id.* DEQ also reported that the test results indicate that "emissions of both

sulfur dioxide and lead were significantly higher than the emission factors in [the Owens-Brockway] permit." 2020 Penalty Order, Cover Letter at 1. Finally, DEQ explained that the opacity data recorded during the May 2019 source tests indicate that the opacity value previously correlated with compliance with the NSPS PM limit (*e.g.,* 10.1% for Furnace D) "is higher than it should be." *Id.* In other words, not only does historical monitoring data show that Owens-Brockway has frequently failed to stay below the opacity value correlated with NSPS PM limit compliance, *supra* at 4, but it appears that even that opacity level was higher than the level needed to assure the facility's compliance. Nonetheless, like the 2019 Penalty Order, the 2020 Penalty Order levies no penalty on Owens-Brockway for NSPS non-compliance and fails to require any corrective action designed to ensure that the opacity of the facility's emissions remain below the level correlated with NSPS PM limit compliance. *See* 2020 Penalty Order.

In addition to assessing a civil penalty of $46,800 to address the facility's violations of the 20% opacity limit and failure to comply with the 2019 Order's testing requirements, the 2020 Penalty Order instructed Owens-Brockway to:

(1) determine a new Opacity Value for Furnace D that correlates with compliance with the NSPS PM limit (2020 Penalty Order, Sec. IV, ¶ 2),
(2) conduct new source testing on Furnaces A and D to demonstrate compliance with the NSPS PM limit of 0.5 grams per kilogram of glass produced (1 lb PM/ton glass) and the Oregon SIP PM limit of 0.10 gr/dscf (2020 Penalty Order, Sec. IV, ¶4.a.),
(3) conduct source testing on Furnaces A and D to verify the accuracy of the emission factors for SO_2 and lead in Condition 33 of the Final Permit (2020 Penalty Order, Sec. IV § 4.b. and c.)

Despite DEQ's express acknowledgment in its April 2019 and January 2020 Penalty Orders that Owens-Brockway needs to undertake remedial measures to come into compliance with the 20% opacity standard, that Owens-Brockway has been and most certainly will continue to experience opacity exceedances well above the level correlated with NSPS PM compliance, and that the facility's May 2019 test results exceed the Oregon SIP PM limit of 0.10 gr/dscf, DEQ did not include a compliance schedule in the Final Permit issued on December 11, 2019. Permit Review Report 26-1976-TV-01, at 1 (Attachment C).

E. General Title V Permitting Requirements

To protect public health and the environment, the Clean Air Act prohibits stationary sources of air pollution from operating without or in violation of a valid permit, which must include conditions sufficient to "assure compliance" with all applicable Clean Air Act requirements. 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.6(a)(1), (c)(1). As defined, "applicable requirements" include all standards, emissions limits, and requirements of the Clean Air Act. 40 C.F.R. § 70.2. Congress intended for Title V to "substantially strengthen enforcement of the Clean Air Act" by "clarify[ing] and mak[ing] more readily enforceable a source's pollution control requirements." S. Rep. at 347, 348, *as reprinted in* A Legislative History of the Clean Air Act Amendments of 1990 (1993), at 8687, 8688. As EPA explained when promulgating its Title V regulations, a Title V permit should "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is

meeting those requirements." Operating Permit Program, Final Rule, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992).

Among other things, a Title V permit must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). *See also* 40 C.F.R. § 70.6(a)(3)(i)(B) ("Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring … [the permit must require] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit…"). Furthermore, in accordance with 40 C.F.R. § 70.7(a)(5), "the permitting authority shall provide a statement that sets for the legal and factual basis for the draft permit conditions." This "statement of basis" must include, among other things, a reasoned explanation for why the selected monitoring, recordkeeping, and reporting requirements are sufficient to assure the facility's compliance with each applicable requirement.[16]

If a source is in violation of an applicable requirement at the time of permit issuance, the source's Title V permit must include an enforceable schedule of remedial measures. 42 U.S.C. § 7661(3). All Title V permit conditions, including a compliance schedule, must be "enforceable" so that the source can be held accountable for violations administratively or in court, including in a citizen suit. *Id.* §§ 7661c(a), 7413(a)(3), 7604(a)(1).

If a state submits a Title V permit that fails to assure compliance with all applicable Clean Air Act requirements, EPA must object to the issuance of the permit before the end of EPA's 45-day review period. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). If EPA does not object to a Title V permit, "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period… to take such action." 42 U.S.C. § 7661d(b)(2); 40 C.F.R.§ 70.8(d). The Clean Air Act provides that EPA "shall issue an objection…if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the" Act. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1); *see also N.Y. Pub. Interest Group v. Whitman*, 321 F.3d 316, 333 n.12 (2nd Cir. 2003) (explaining that under Title V, "EPA's duty to object to non-compliant permits is nondiscretionary"). EPA must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

II. GROUNDS FOR OBJECTION

For the reasons set forth below, the Final Permit for Owens-Brockway's glass manufacturing facility fails to comply with the Clean Air Act's procedural and substantive requirements.

[16] *See, e.g., In re Los Medanos Energy Center*, EPA Order in Response to Petition (May 24, 2004), available at https://www.epa.gov/sites/production/files/2015-08/documents/los_medanos_decision2001.pdf.

A. The Final Permit Lacks Conditions Sufficient to Assure Compliance with the Applicable Particulate Matter Emission Limit in the New Source Performance Standard for Glass Manufacturing (40 CFR Part 60, Subpart CC).

1. Permit Conditions at Issue in Claim A

Permit Condition 12: Identifies the NSPS PM limit of 0.5 grams per kilogram of glass produced as an applicable requirement.

Permit Condition 13: Requires PM stack testing using Method 5 once every five years to demonstrate compliance with NSPS PM limit.

Permit Condition 15: Requires permittee to identify the opacity value that correlates with the facility's compliance with the NSPS when undertaking the Method 5 testing required by Permit Condition 13, to continuously measure opacity using a Continuous Opacity Monitoring System (COMS), and to report "excess emissions" in accordance with Permit Condition 16.

Permit Condition 16: Identifies the applicable NSPS reporting requirements for exceedance of the opacity level that has been correlated with PM limit compliance. Specifies that such opacity exceedances do not qualify as "excess emissions" for purposes of Condition 43, which pertains to reporting of excess emissions under Oregon's Title V regulations.

2. Specific Permit Deficiencies

Claim A.1: *The Final Permit's Combination of Once-Per-Permit-Term Method 5 Testing and Opacity Monitoring is Insufficient to Assure Compliance with the NSPS PM Limit Because the Correlated Opacity Levels are Unenforceable and Exceedances Do Not Trigger Corrective Action or More Definitive Compliance Testing, and the Method 5 Testing is Too Infrequent.*

The Final Permit is deficient because it lacks conditions sufficient to assure compliance with the applicable particulate matter limit of 0.5 grams per kilogram of glass produced (1 lb PM/ton glass), which is derived from the glass manufacturing New Source Performance Standard (NSPS), 40 C.F.R. part 60, subpart CC, at § 60.293(b)(1), and set forth in Permit Condition 12. Thus, the permit contravenes the Title V requirement that a Title V permit "include enforceable emission limitations and standards … and such other conditions as are necessary to assure compliance with the applicable requirements of [the Clean Air Act]." 42 U.S.C. 7661c(a). *See also* 40 C.F.R. §§ 70.6(a)(1), (c)(1). Relatedly, in violation of 40 C.F.R. § 70.7(a)(5), DEQ failed to provide a reasoned explanation in the permit record for why it believes the permit conditions are sufficient to assure the facility's compliance with the NSPS PM limit. Petitioners raised this issue on pages 5-7 of their comments on the draft permit.

While Final Permit Conditions 13, 15, and 16 incorporate Method 5 testing and continuous opacity monitoring as required by 40 C.F.R. part 60, subpart CC, § 60.296(d), this

NSPS was promulgated in the 1980s[17] prior to Congress' enactment of Title V and is insufficient to satisfy Title V.[18] Specifically, the Final Permit requires only one Method 5 test during the permit term to determine the facility's compliance with the NSPS PM limit (Permit Condition 13), and though the Final Permit Condition 15 requires continuous opacity monitoring in between source tests, the opacity level correlated with PM limit compliance is not enforceable and exceedances of that limit do not trigger any corrective action. As a result, the facility can exceed the correlated opacity level with impunity; rather than "assur[ing] compliance" as required by Title V, the Final Permit simply provides the public with an indication that the facility is most likely in non-compliance without providing any assurance that the facility is in compliance or will achieve compliance.

Indeed, that is exactly what happened under the facility's prior Title V permit. After Petitioners filed their comments on the draft permit expressing concern that nothing in the draft permit or the permit record identified the opacity level that had been correlated with compliance, or even confirmed that Owens-Brockway had ever made such correlation, DEQ decided to request opacity monitoring data from the company. Subsequently, DEQ released its April 2019 Penalty Order. (Attachment E). The Order documents that the opacity value Owens-Brockway previously correlated with Furnace D's compliance with the NSPS PM limit is 10.1%. *Id.* at 2. The Order further documents DEQ's finding that during calendar years 2017 and 2018, Furnace D's emissions exceeded the 10.1% opacity value on 83 occasions on 27 different calendar dates. *Id.* However, despite abundant evidence that Furnace D had been regularly exceeding the opacity level correlated with compliance with the NSPS PM limit, DEQ found that enforcement was not possible because exceedances of the correlated opacity level "are not violations" but rather, "indicate that the facility is not being operated and maintained consistent with good air pollution control practices." *Id.* Instead, DEQ concluded that it could only enforce the separate 20% opacity standard established under Oregon's SIP at OAR 340-208-0100. *Id.* Thus, the 2019 Penalty Order addressed a mere 8 violations of the 20% opacity limit. 2019 Penalty Order at 3.

According to the test results attached to the Permit Review Report, prior to the May 2019 testing, the most recent time the facility had performed PM compliance testing was in 2006, the year that the facility's prior Title V permit had been issued. Furnace Test Results for PM and SO_2 (Appended to Permit Review Report, Attachment C).

Despite regular exceedances of the opacity level previously correlated with PM limit compliance (10.1%), it has not been possible for the public to utilize the Title V permit to hold the facility accountable for NSPS non-compliance, or even to insist that the facility take steps to further investigate its compliance status or consider whether it needs to adjust its operations.

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[17] EPA, Glass Manufacturing Plants New Source Performance Standards (NSPS), Rule History, https://www.epa.gov/stationary-sources-air-pollution/glass-manufacturing-plants-new-source-performance-standards-nsps

[18] Regardless of when a rule was promulgated, a facility's Title V permit must include conditions sufficient to assure compliance with applicable requirements set forth in the rule. Specifically with respect to federal regulations promulgated before 1990, EPA admits that monitoring requirements may be insufficient to satisfy Title V. *See Sierra Club v. EPA*, 536 F.3d 673, 677 (D.C. Cir. 2008) (quoting from EPA's brief in that case, which stated: "EPA recognizes that the monitoring required by some rules … -- particularly those that pre-date the 1990 … Amendments – may not be adequate to assure compliance and should be improved.").

Because the only two PM compliance tests the facility has been required to perform during the past 15 years have not themselves demonstrated non-compliance (though the results of the 2019 tests are questionable given the combination of a razor thin compliance margin and a failure to operate Furnace A at a sufficiently high capacity to demonstrate compliance, *supra* at 5), DEQ appears to have concluded that it has no basis for an enforcement action. Furthermore, DEQ has not required Owens-Brockway to take any corrective action whatsoever to bring its emissions below the correlated opacity level. This is in spite of opacity levels present during the 2019 Method 5 test being well below the correlated level of 10.1%, thus providing no assurance that the facility has actually been complying with the NSPS PM limit on the many occasions on which its opacity has exceeded that level. Moreover, while DEQ indicates that Owens-Brockway took the necessary measurements to correlate a new opacity level with NSPS PM limit compliance when it performed a Method 9 test in May 2019, nearly eight months have passed since the test but Owens-Brockway has yet to provide the correlated opacity level to DEQ.[19] DEQ's statement in the 2020 Penalty Order expressing concern that even the 10.1% opacity value is higher than what likely correlates with NSPS compliance by Furnace D adds insult to injury. *See supra* at 6.

For opacity monitoring to adequately "assure compliance" with the NSPS PM limit, the permit must ensure that exceedances of the correlated opacity level mean something—either they need to be enforceable so that the permittee incurs legal liability when exceeding that level, or exceedances must trigger some other mandatory action designed to either assure the source's compliance or confirm the facility's actual compliance status. Compliance with the applicable PM limit cannot by assured by merely requiring Owens-Brockway to monitor a parameter, the exceedance of which is only indicative of possible non-compliance, without specifying any corrective action or liability that is triggered by an exceedance.

In comments on the draft permit, Petitioners stated that DEQ is obligated to add periodic testing and monitoring requirements to the Owens-Brockway permit that are sufficient to assure the facility's compliance with the Glass Manufacturing NSPS. Draft Permit Comments at 5. Petitioners further commented that the draft permit's combination of a once-per-permit term Method 5 test and continuous opacity monitoring is insufficient because the Method 5 tests are too infrequent and the opacity value correlated with compliance is not itself enforceable. *Id.* at 5-6. Finally, Petitioners commented that DEQ needed to provide a reasoned explanation for why the testing frequency is sufficient to assure the facility's compliance with the NSPS standards. Petitioners identified glass plants in other states that are required to perform more frequent Method 5 testing, specifically, Ardagh Glass, Inc.'s Seattle facility (quarterly testing)[20] and its

[19] Email from George Yun, DEQ, to Keri Powell, dated Jan. 7, 2020 (Attachment H).
[20] Air Operating Permit for Ardagh Glass, Inc., Puget Sound Clean Air Agency, Permit No. 11656, issued June 6, 2007, at II(A)(2)(b), p. 30, *available at* https://pscleanair.gov/DocumentCenter/View/210/Air-Operating-Permit-PDF?bidId= (Attachment I).

North Carolina facility (annual testing)[21], and Owens-Brockway's Georgia facility (every 24 months).[22] *Id.*

DEQ made no attempt to explain why it is sufficient to require the facility to perform a Method 5 test only once every five years. Instead, DEQ generally asserted that various factors influence how frequently a source is required to perform such testing. DEQ Response to Comments at 4. DEQ did not explain why source-specific factors at the Owens-Brockway Portland plant supported less frequent testing than is required at other glass plants identified in Petitioners' comments. DEQ's vague and unsupported assertion that source-specific factors support testing the Owens-Brockway Portland plant less frequently than other similar plants is arbitrary given that:

- the standard in question regulates PM emissions that contain numerous toxic pollutants, including arsenic, cadmium, chromium, lead, manganese, nickel, and selenium;
- the Owens-Brockway facility is located in the City of Portland, unusually close to residences and schools;
- the facility's opacity monitoring reports document numerous and continuing exceedances of the opacity value correlated with NSPS compliance, and
- the permit fails to make the opacity value correlated with NSPS compliance enforceable, and fails to require corrective action when the facility exceeds the correlated opacity level, thereby leaving no opportunity to hold Owens-Brockway accountable for NSPS violations other than based on the results of the facility's Method 5 tests.

Thus, at a minimum, EPA must object to DEQ's failure to provide a reasoned response to public comments (or, for that matter, any explanation at all) as to why the permit's conditions are sufficient to "assure compliance" with the NSPS PM limit as required by Title V.

In response to Petitioners' comment that DEQ needed to make the opacity level correlated with PM limit compliance an enforceable permit requirement, DEQ stated that the NSPS "does not assign a specific value to the opacity limit," but that Permit Condition 17 "expressly mandates that Owens meet the 20 percent (%) opacity limit," which is "federally enforceable." DEQ Response to Comments at 3 (Attachment C). DEQ's response is insufficient.

First, the permit's 20% opacity limit is derived from Oregon's SIP, not the NSPS. *See* Permit Condition 17 (citing to SIP Rule OAR 340-208-0110). Nothing in the final permit or the permit record indicates that maintaining compliance with the separate 20% opacity limit is sufficient to assure compliance with the NSPS PM limit. To the contrary, information made available after the close of the comment period reveals that the facility's previous NSPS testing

[21] Title V Operating Permit for Ardagh Glass, Inc., North Carolina Department of Environmental Quality, Permit No. 03713T37, issued Mar. 22, 2018, at p. 6, (available via permit search at https://xapps.ncdenr.org/aq/docs/FDocs_Search.jsp) (Attachment J).
[22] Part 70 Operating Permit, Owens-Brockway Glass Container, Inc.-#10 Atlanta Plant, Georgia Environmental Protection Division, Permit No. 3221-121-0020-V-04-0, effective date Feb. 16, 2016, at p.7, Condition 4.2.1, *available at* https://permitsearch.gaepd.org/permit.aspx?id=PDF-VF-40234 (Attachment K)

on Furnace D correlated an opacity level of no more than 10.1% with compliance, 2019 Penalty Order, Cover Letter at 1, and even that level likely "is higher than it should be." 2020 Penalty Order, Cover Letter at 1.

Second, DEQ's assertion that the NSPS does not itself make the correlated opacity level enforceable does not constitute a reasoned explanation for why monitoring whether the facility meets an unenforceable opacity limit is sufficient to "assure compliance" with the NSPS PM limit as required by Title V (*see supra* at 6-7, describing Title V requirements). As the D.C. Circuit concluded in *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008), "a monitoring requirement insufficient 'to assure compliance' with emission limits has no place in a permit unless and until it is supplemented by more rigorous standards." *Id.* at 677. Rather, "somebody must fix these inadequate monitoring requirements." *Id.* at 678. Thus, the Court held that because Clean Air Act § 7661c(c) requires that "[e]ach" permit include monitoring sufficient to "assure compliance," if the monitoring specified in an underlying applicable regulation is inadequate, the permitting authority must "cure these monitoring requirements before including them in permits." *Id.* So here. Regardless of whether the NSPS makes the opacity value correlated with compliance enforceable, DEQ must decide whether that opacity value needs to be made enforceable in the Owen-Brockway Title V permit in order to assure the facility's compliance with the NSPS PM limit. And even if DEQ chooses to allow the correlated opacity value to remain unenforceable, DEQ is obligated to provide a reasoned explanation in its response to comments (and more generally, in the permit record), for why its selected monitoring approach will assure the facility's compliance. No such explanation appears anywhere in the permit record.

Aside from making the correlated opacity value enforceable, another option that DEQ could have pursued would have been to require that Owens-Brockway take specified remedial actions or perform source testing after measuring an exceedance. In promulgating the federal Compliance Assurance Monitoring (CAM) rule (which is not included in the Owens-Brockway permit, but is nonetheless relevant because it is intended to "assure compliance" with a facility's applicable requirements in accordance with Title V's directive), EPA explained that one method for assuring a facility's compliance with an applicable requirement is to "establish monitoring as a method for directly determining continuous compliance with applicable requirements." 62 Fed. Reg. 54,900, 54,902 (Oct. 22, 1997). The other approach is "to establish monitoring for the purpose of: (1) Documenting continued operation of the control measures within ranges of specified indicators of performance (such as emissions, control device parameters and process parameters) that are designed to provide a reasonable assurance of compliance with applicable requirements; (2) indicating any excursions from these ranges; and (3) *responding to the data so that excursions are corrected*." *Id.* (emphasis added). The Owens-Brockway permit fails to implement either approach. As explained above, compliance with the enforceable 20% opacity limit has not been shown to correlate with the facility's compliance with the NSPS PM limit. As for monitoring whether the facility exceeds the unenforceable opacity level correlated with NSPS compliance, the permit lacks any permit condition requiring Owens-Brockway to take corrective measures in response to opacity exceedances.

In sum, the Final Permit serves to document likely noncompliance with the NSPS PM limit (and similar conditions in the facility's prior Title V permit did so abundantly), but does

nothing whatsoever to make the facility accountable for opacity exceedances or to require corrective action. The only opportunity the public has to take action to address the facility's non-compliance is when Owens-Brockway performs its once-per-permit-term Method 5 test, and then only if the scheduled test shows non-compliance with the PM limit at that particular time. Such approach cannot reasonably be found to "assure compliance" with the applicable NSPS PM limit as required by Title V. EPA must object and require DEQ to revise the relevant permit conditions to either require sufficient monitoring that can be relied upon to directly determine the facility's ongoing compliance with the NSPS PM limit, or, at a minimum, to develop enforceable conditions requiring adequate corrective actions whenever the facility exceeds the correlated opacity standards. EPA must also object to DEQ's failure to provide a reasoned explanation in the permit record (including in response to comments) for why it believes that a once-every-5-years source test combined with monitoring whether the facility meets the unenforceable correlated opacity value is sufficient to assure the facility's compliance with the NSPS PM limit. *See, e.g., In the Matter of Consolidated Edison Co. of NY, Inc., Ravenswood Steam Plant*, Order on Petition No. II-2001-08, at 12 (Sept. 30, 2003) (objecting to inadequacy of permit's PM monitoring requirements and explaining that when the state reopens the permit to make corrections, it "will be required to make available for comment an adequate statement of basis that includes the rationale for the revised particulate matter monitoring regime") (available at https://www.epa.gov/sites/production/files/2015-08/documents/ravenswood_petition2001.pdf.[23]

Claim A.2: *Even if EPA Were to Conclude that the Final Permit's Unenforceable Opacity Monitoring Approach is Sufficient to Assure Compliance with the Glass Manufacturing NSPS, the Final Permit is Deficient Because it Fails to Identify the Specific Opacity Level that Correlates with Compliance.*

Even if EPA were to find that parametric monitoring can "assure compliance" with an applicable requirement where the parameters are unenforceable and parameter exceedances trigger no corrective action or compliance testing, the Final Permit's NSPS monitoring is insufficient to satisfy 42 U.S.C. § 7661c(a) and 40 C.F.R. §§ 70.6(a)(1) and (c)(1) because the permit fails to identify the opacity value that correlates with NSPS PM limit compliance.

Though this facility has been operating for many years and has performed stack testing to correlate PM compliance with a specific opacity level, the correlated opacity level appears nowhere in the permit. Instead, Final Permit Condition 16.a. simply declares that "'excess emissions' are all of the opacity values based on a 6-minute average that exceed the Opacity Value corresponding to the 99 percent upper confidence level determined in Condition 15.e or 15.f." Final Permit Conditions 15.e and 15.f, in turn, simply refer to "source testing" without identifying any particular source test. As EPA has repeatedly declared that where a Title V permit relies on parametric monitoring to assure compliance with an applicable requirement, the acceptable parametric ranges must be included in the permit. *See, e.g., In re Dunkirk Power LLC*,

[23] Though the above discussion cites to information obtained after the close of the public comment period (i.e., the 2019 and 2020 penalty orders, and the Source Test Review Report), Petitioners believe they raised the inadequacy of permit's NSPS conditions with "reasonable specificity" in their comments on the draft permit. Insofar as EPA concludes that the additional information is central to Petitioners' claim, such information plainly was unavailable during the comment period and thus, Petitioners can raise issues arising from that newly provided information in this Title V petition without first presenting them to DEQ in public comments. 42 U.S.C. § 7661d(b)(2).

Order on Petition No. II-2002-02 (July 31, 2003) at 20, https://www.epa.gov/sites/production/files/2015-08/documents/dunkirk_decision2002.pdf ("Since parameteric monitoring of the [electrostatic precipitator] helps assure compliance with the PM standards, the proper operating ranges for these parameters must be incorporated into Dunkirk's title V permit.").

Petitioners raised this issue on page 6 of their comments on the draft permit. DEQ responded that opacity values "function as an indicator of PM emissions," and that the NSPS "does not assign a specific value to the opacity limit." DEQ Response to Comments at 3. But regardless of whether an underlying applicable requirement makes the parametric value enforceable, if a parameter is used in a Title V permit to assure compliance with the applicable requirement, the specific parametric value that correlates with a reasonable assurance of compliance must be identified in the permit. DEQ's failure to identify the correlated opacity value in the Final Permit necessitates EPA's objection.

Claim A.3: *The Final Permit Fails to Unambiguously Require Owens-Brockway to Correlate an Opacity Value with NSPS Compliance During Method 5 Testing.*

For opacity monitoring to "assure compliance" with the NSPS PM limit, it is critical that the correlated opacity value be reliable. Due to aging equipment and other factors, the correlation between opacity and a facility's compliance with a PM limit can change. Unfortunately, though the Final Permit requires Owens-Brockway to perform a Method 5 test once per permit term, the permit appears to give Owens-Brockway discretion regarding whether to re-correlate opacity with PM during that testing. Specifically, Final Permit Condition 15.e. utilizes the word "may" to describe the permittee's obligation to perform the measurements needed to establish the opacity/PM correlation when performing the Method 5 test required by Final Permit Condition 13. DEQ's addition of the word "may" indicates that DEQ intended make re-correlation of opacity and PM limit compliance voluntary.

Petitioners raised this issue on page 6 of their comments on the draft permit. DEQ did not respond directly to Petitioners' concern regarding the permit's use of the word "may" in Permit Condition 13. Instead, DEQ simply stated that "[t]he opacity value that correlates to the PM emissions rate (< limit) from each furnace is also established during testing." DEQ Response to Comments at 3. DEQ's response is insufficient. Petitioners' point was that to be reliable, the correlated opacity value must be periodically re-confirmed through testing. Simply declaring that the correlation is made during testing is unresponsive. Inclusion of the word "may" in Final Permit Condition 15.e creates doubt regarding the accuracy of the correlated opacity level and undermines the reliability of opacity monitoring for the purpose of assuring compliance with the NSPS PM limit. Thus, EPA must object to Final Permit Condition 15.e because it fails to satisfy the requirements of 42 U.S.C. § 7661c(a) and 40 C.F.R. §§ 70.6(a)(1) and (c)(1) or, at a minimum, object to DEQ's failure to provide a reasoned explanation for why it is unnecessary to require Owens-Brockway to periodically re-correlate opacity with PM limit compliance.

B. The Permit Lacks Sufficient Monitoring, Recordkeeping, and Reporting to Assure Compliance with the Applicable Particulate Matter Emission Limit in Oregon's Clean Air Act State Implementation Plan.

1. Relevant Permit Conditions to Claim B

Permit Condition 14: Identifies the 0.10 gr/dscf PM limit from Oregon's SIP Rule OAR 340-226-0210 as an applicable requirement. States that PM emissions "can be calculated from the source test results obtained from Condition 35."

Permit Condition 35: Requires PM source testing once every five years (once per permit term).

2. Specific Permit Deficiency

EPA also must object to the Final Permit because it lacks monitoring, recordkeeping, and reporting sufficient to assure compliance with the applicable PM limit of 0.10 gr/scf, which is derived from Oregon SIP Rule OAR 340-226-0210. Final Permit Condition 14. Because OAR 340-226-0210 does not specify "periodic monitoring," DEQ must add monitoring to the facility's Title V permit that will "yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B). The Final Permit plainly does not satisfy this requirement with respect to the 0.10 gr/scf PM limit. The only monitoring identified in the Final Permit as being associated with the 0.10 gr/scf PM limit is a requirement to perform PM source testing once during the permit's 5-year term. Final Permit Conditions 14, 35. A once-per-permit-term source test is neither "periodic" nor sufficient to assure the facility's compliance. Petitioners raised this issue on page 7 of their comments on the draft permit (Attachment A).

DEQ responded to Petitioners' comment by claiming that the Final Permit relies on "continuous visible emissions monitoring by COMS" as "parametric monitoring." DEQ Response to Comments at 4. However, the opacity monitoring referred to by DEQ pertains only to monitoring compliance with the state's 20% opacity limit, which has not been correlated with compliance with 0.10 gr/scf PM limit. *See* Final Permit Conditions 17 (20% opacity standard), 18 (identifying use of COMS data to demonstrate compliance with the 20% opacity limit). Nor does the Final Permit indicate anywhere that monitoring the facility's compliance with the separate 20% opacity limit is intended also to assure compliance with the 0.10 gr/scf PM limit. Final Permit at 7, Table II (identifying only the source testing in Conditions 13 and 35 as a "Monitoring Requirement" associated with Condition 14). DEQ also fails to provide an explanation as to why a once-per-permit PM test is sufficient to assure the facility's compliance with the SIP PM limit.

The only circumstance in which a permitting authority may be justified in issuing a Title V permit that lacks periodic monitoring, recordkeeping, and reporting to assure the facility's compliance with an applicable requirement is where prior testing and monitoring demonstrates that the facility is highly unlikely to even come close to violating the standard. Obviously, such circumstance is not present here. As discussed *supra* at 5, stack testing performed in May 2019 shows that Furnace D is not complying with the of 0.10 gr/scf PM limit. Specifically, the source

testing revealed PM emissions from Furnace D of 0.12 fr/dscf, which complied with the then-existing permit limit of 0.1 gr/scf only because DEQ based its compliance determination "on 1-significant figure." DEQ Response to Comments at 4. In the revised Final Permit, however, DEQ clarified in Final Permit Condition 14 that the applicable PM limit is 0.1**0** gr/scf. DEQ also acknowledges in its 2020 Penalty Order that Furnace D's May 2019 test results exceed the applicable PM limit as it is now appears in the Final Permit. 2020 Penalty Order at 4, n.2.

EPA must object to this permit deficiency and instruct DEQ to add conditions to the permit that clearly identify periodic monitoring that will assure the facility's ongoing compliance with the 0.10 gr/scf PM limit. EPA must also instruct DEQ to provide a reasoned explanation in the permit record for why it the monitoring it selects in response to EPA's objection is sufficient to assure the facility's ongoing compliance.

C. The Final Permit Lacks Conditions Sufficient to Assure Compliance with the Requirement to Take "Reasonable Precautions" to Control Fugitive Dust.

1. Relevant Permit Conditions to Claim C

Permit Condition 6: Requires facility to take "reasonable precautions to prevent particulate matter from becoming airborne in accordance with OAR 340-208-0210.

Permit Condition 7: Requires inspections and recordkeeping in a log but does not identify any specific "reasonable precautions" that need to be taken.

2. Specific Permit Deficiency

Final Permit Condition 6 requires Owens-Brockway to take "reasonable precautions" to control fugitive dust. This requirement is derived from Oregon SIP Rule OAR 340-208-0210. Unfortunately, neither Condition 6 nor the underlying rule specifies what constitutes "reasonable precautions" for the Owens-Brockway facility. Likewise, while Final Permit Condition 7 directs Owens-Brockway to monitor "the area where fugitive visible emissions could occur" and record inspection results as well as any "corrective actions taken," this condition fails to identify what fugitive dust control activities the facility is required to undertake. Thus, the Final Permit is deficient because it lacks "[e]missions limitations and standards, *including those operational requirements and limitations that assure compliance with all applicable requirements* at the time of permit issuance." 40 C.F.R. § 70.6(a)(l) (emphasis added). *See also* OAR 340-218-0050(1) (same); 42 U.S.C. §7661c(a), (c).

In 2014, EPA objected to a nearly identical permit deficiency in Title V permits issued to five coal-fired power plants in Georgia. *See In the Matter of Scherer Steam-Electric Generating Plant, et al.*, Order on Petition Nos. IV-2012-1, IV-2012-2, IV-2012-3, IV-2012-4, and IV-2012-5 (Apr. 14, 2014) at 19 (available at https://www.epa.gov/sites/production/files/2015-08/documents/ga_power_plants_response2012.pdf). Like the Owens-Brockway permit, the Georgia Title V permits incorporated a SIP requirement that the facilities take "reasonable precautions" to control their fugitive dust but failed to identify what constituted "reasonable precautions." *Id.* And, like the Oregon SIP rule, the Georgia SIP rule did not identify specifically

required fugitive dust control activities, but simply provided a list of "[s]ome reasonable precautions which could be taken." *Id.* at 18. *Compare* OAR 340-208-0210 (identifying activities that "reasonable precautions may include"). In response to a citizen petition, EPA objected to the Georgia permits on the basis that "without details regarding what type of actions qualify as 'reasonable precautions' to control fugitive dust at these facilities, the permits do not assure compliance with Georgia SIP Rule 391-3-1-.02(2)(n)1." *Id.* For the same reason, EPA must object to DEQ's failure to identify what qualifies as "reasonable precautions" for the Owens-Brockway facility.

Petitioners raised this issue on pages 11-12 of their comments on the draft permit. DEQ rejected Petitioners' request to add specificity to the permit regarding fugitive dust control measures on the basis that "[t]he monitoring requirements specified in condition 7 are more effective than narrowly defining what the fugitive emissions are. As stated in condition 7.b, any visible emissions present (inside the plant) requires corrective action." DEQ Response to Comments at 6. But DEQ appears to have misunderstood Petitioners' comment. Petitioners did not ask for DEQ to define "what the fugitive emissions are," but rather, what constitutes "reasonable precautions" that Owens-Brockway must take to comply with OAR 340-208-0210. Contrary to DEQ's suggestion, the applicable requirement is not simply for Owens-Brockway to wait until it observes visible emissions and then take "corrective action." *Id.* Rather, Owens-Brockway must take "reasonable precautions *to prevent* particulate matter from becoming airborne." OAR 340-208-0210(1) (emphasis added). To assure compliance with that requirement, it is necessary for the permit to provide "details regarding what type of actions qualify as 'reasonable precautions' to control fugitive dust." *Scherer* Order at 19.

The correctness of Petitioners' position is illustrated by an example provided by DEQ in response to Petitioners' comments. DEQ described an inspection of the Owens-Brockway facility conducted in 2016. DEQ Response to Comments at 6. During the inspection, "although no visible emissions were detected during the inspection," DEQ's inspectors identified "several deficiencies in the raw materials handling and processing areas. *Id.* DEQ explained that these "potential problem areas (e.g., broken windows, gaps in duct works, material chute opening) … could potentially result in fugitive emissions." *Id.* DEQ finishes by explaining that Owens corrected these problems in response to DEQ's warning letter. *Id.* at 7. But contrary to DEQ's implication, the challenged permit conditions do nothing to ensure that Owens-Brockway will correct such problems before they result in harmful fugitive dust emissions. Specifically, as DEQ admits, rather than identify specific precautions that the facility must take to "prevent" fugitive dust, the permit directs Owens-Brockway to look for visible emissions and engage in corrective action only if such emissions are observed. In DEQ's example, no visible emissions were observed, so the permit condition would not have resulted in any corrective action.

As required by Title V, EPA must object to the Final Permit's lack of conditions sufficient to assure compliance with the requirement that Owens-Brockway take reasonable precautions to prevent fugitive dust. EPA should instruct DEQ to add sufficient specificity to the permit to clarify what constitutes "reasonable precautions" for the Owens-Brockway facility, and to supplement the permit with monitoring, recordkeeping, and reporting sufficient to assure that the facility takes the required precautions. Finally, EPA must require DEQ to explain why the

conditions selected are sufficient to assure compliance with the fugitive dust control requirement of OAR 340-208-0210.

D. The Final Permit Fails to Assure Compliance with the Applicable Chromium Emission Limit Under 40 C.F.R. Part 63, Subpart SSSSSS ("6S")

1. Relevant Permit Condition Related to Claim E

Permit Condition 20: Requires compliance with the 0.02 lbs Hazardous Air Pollutants (HAP)/ton glass limit set forth in 40 C.F.R. part 63, Subpart 6S, § 63.11451.

Permit Condition 21: Requires source testing once every five years to demonstrate compliance with the HAP limit required in Permit Condition 20.

Permit Condition 22: Requires the facility to monitor various parameters and determine compliance with the HAP limit by utilizing a specified equation that utilizes the Metal HAP emission rate from source testing required by Permit Condition 21.

2. Specific Permit Deficiency

The Final Permit is deficient because the permit conditions fail to require monitoring, recordkeeping, and reporting sufficient to assure compliance with the 0.02 lbs HAP/ton glass emission limit applicable to Furnace D (Final Permit Condition 20), as required by 40 C.F.R, § 63.11451. In particular, Final Permit Condition 22.e. authorizes Owens-Brockway to demonstrate compliance with the HAP limit (applicable to Furnace D's chromium emissions) using a chromium emission factor derived from the results of the facility's May 2019 source testing, despite the fact that during the testing, "Furnace D was not producing green glass with the greatest potential to emit chromium." Source Test Report at 19. At a minimum, EPA must object to DEQ's failure to provide a reasoned explanation for why the monitoring and recordkeeping required by Permit Condition 22 is sufficient to assure the facility's compliance with the applicable chromium limit despite Owens-Brockway's use of an unreliable emission factor.

Petitioners could not have raised their concern regarding the inadequacy of Owens-Brockway's chromium emission factor in their comments on the draft permit because the May 2019 source testing had not yet been performed. Accordingly, Petitioners can petition EPA to object to the Final Permit based on this deficiency even through it was not presented in their comments. 42 U.S.C. § 7661d(b)(2).

In their comments on the draft permit, Petitioners raised several concerns regarding the adequacy of the draft permit's chromium testing and monitoring requirements. Draft Permit Comments at 7-11. Among other things, Petitioners argued that a once-per-permit-term source test was insufficient to verify the furnaces' chromium emission rate, which can change over time as the furnaces age and their chromium-lined bricks deteriorate. *Id.* at 9. Petitioners pointed out that source testing for chromium and other HAP had not occurred since 2008, a decade earlier. *Id.*

After the close of the public comment period on the draft permit, DEQ issued the 2019 Penalty Order directing Owens-Brockway to perform chromium testing, which the facility did in May 2019. *See* Permit Review Report. Though the testing indicated that Furnace D was emitting below the applicable metal HAP emission limit, as noted above, the furnace was not producing green glass with the greatest potential to emit chromium during that time. *Id.* at 19. Nonetheless, DEQ declared in its response to Petitioners' comments that "[s]ource test[s] performed on May 15 through 23, 2019 indicates the production-based metal HAP emissions (i.e., Cr) from furnace [D] to be 3.3 x 10^{-4} lbs/ton glass produced," which is "less than the standard." DEQ Response to Comments at 5. DEQ's Response to Comments makes no mention of the fact that the source testing did not actually measure how much chromium Furnace D emits when producing green glass with the highest potential to emit chromium. Moreover, nothing in the Final Permit prevents Owens-Brockway from producing such higher-emitting glass in Furnace D.

Despite the fact that the chromium emission factor resulting from the May 2019 testing likely underestimates the facility's chromium emissions, Final Permit Condition 22 generally authorizes Owens-Brockway to utilize the emission factor obtained from the May 2019 testing to demonstrate its compliance with the 0.02 lbs HAP/ton glass emission limit throughout most of the permit term. Specifically, the equation in Final Permit Condition 22 incorporates the variable "$E_{HAP\text{-}ST}$," which is defined as the "Metal HAP emission rate from applicable source test of Condition 21 or 22.d." Because Final Permit Condition 21 requires source testing only "every 5 years," that means that Owens-Brockway can utilize the unreliable chromium emission factor determined based on the May 2019 source testing for nearly the entirety of the 5-year permit term—especially when considering that a new emission factor based on future source testing would not be finalized until some time after testing is completed.

While EPA's 2020 Penalty Order requires Owens-Brockway to undertake additional source testing for certain pollutants, that list does not include chromium. 2019 Penalty Order, Section IV, ¶ 4. Likewise, DEQ's Response to Comments provides no indication that Owens-Brockway will be required to perform chromium source testing any sooner than "prior to May 15, 2024, followed by another testing prior to May 15, 2029." DEQ Response to Comments at 6.

Allowing Owens-Brockway to demonstrate its compliance with the applicable chromium emission limit using an emission factor that most likely underestimates its chromium emissions does not "assure compliance" with the applicable emission limitation set forth in Final Permit Condition 20. Thus, the substantive terms of the Final Permit are insufficient to satisfy 42 U.S.C. 7661c(a) and 40 C.F.R. §§ 70.6(a)(1), (a)(3) and (c)(1) and EPA therefore must object. At a minimum, EPA must object to DEQ's failure to provide a reasoned explanation in the permit record for allowing Owens-Brockway to utilize the chromium emission factor derived from the flawed May 2019 source testing. As EPA has explained in prior Title V orders, "the permit record must support the selected emission factors." *In the Matter of Piedmont Green Power*, Order on Petition No. IV-2015-2 (Dec. 13, 2016), at 15 (available at https://www.epa.gov/sites/production/files/2016-12/documents/piedmont_response2015.pdf). *See also, id.* at 16 (the permitting authority "must provide a reasoned explanation in the Final Permit's Statement of Basis for how the chosen approach [to demonstrating compliance] makes the HAP limits enforceable as a practical matter"); *In the Matter of Pope and Talbot, Inc.,*

Lumber Mill, Order on Petition No. VIII-2006-04 (Mar. 22, 2007) at 11 (objecting to a Title V permit where the "HAP emission calculations are not properly documented—in particular the emission factor used for methanol" where "the basis for establishing" the methanol limit was "unclear") (available at https://www.epa.gov/sites/production/files/2015-08/documents/pope_talbot_decision2006.pdf). In objecting to this permit deficiency, EPA should instruct DEQ that it must reopen the Final Permit and provide an opportunity for public comment on its rationale for why the chromium emission factor that it selects (or whatever alternative monitoring approach it proposes to utilize) is sufficient to assure the facility's ongoing compliance with the applicable 0.02 lbs HAP/ton glass limit throughout the permit term.

E. The Final Permit Fails to Assure Compliance with the Facility's General Duty to Prevent Accidental Releases under Clean Air Act § 112(r)(1).

1. Relevant Permit Condition to Claim E

Permit Condition 11: Requires facility to submit a risk management plan if it becomes subject to the accidental release provisions of 40 CFR Part 68.

2. Specific Permit Deficiency

The Final Permit also is deficient in that it does not even mention, let alone assure compliance with, Owens-Brockway's general duty under Clean Air Act § 112(r)(1) "to identify hazards which may result" from the accidental release of extremely hazardous substances, and "to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur." EPA has explained that § 112(r)(1) is "a self-executing statutory requirement" that "requires no regulations or other EPA action to take effect." 61 Fed. Reg. 31668, 31680/3 (June 20, 1996). Petitioners raised this issue on pages 12-13 of their comments on the draft permit, but DEQ failed to respond. Instead, DEQ described its obligation to assure the facility's compliance with Clean Air Act § 112(r)(7)'s Risk Management Plan requirements, which are detailed in 40 C.F.R. part 68 and are distinct from § 112(r)(1) requirements. DEQ Response to Comments at 7.

Clean Air Act § 112(r)(1), commonly referred to as the "General Duty Clause," applies to any facility that produces, processes, handles, or stores any amount of a hazardous substance listed pursuant to Clean Air Act § 112(r)(3) or any other "extremely hazardous" substance. The list of substances prepared pursuant to Clean Air Act § 112(r)(3) is published at 40 C.F.R. § 68.130. As shown on page 20 of the Permit Review Report, the Owens-Brockway plant produces, processes, handles, and stores numerous listed hazardous substances, including, among many others, ammonia, arsenic, formaldehyde, chromium, and lead.[24] Moreover, as a Clean Air Act § 112 requirement, the General Duty Clause easily qualifies as an "applicable requirement" that must be addressed in a facility's Title V permit if it applies. *See* 40 C.F.R. § 70.2 (defining

[24] In addition to substances listed in 40 C.F.R. part 68, the General Duty Clause applies to a source's handling of any other "extremely hazardous substance," which is not defined in the Act. A discussion of what substances are included in that category appears in EPA's guidance document, "Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)," EPA 550-B00-002 (May 2000), *available at* https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf. The Owens-Brockway facility may handle extremely hazardous substances in addition to those listed in the Permit Review Report.

"[a]pplicable requirement" to include [a]ny standard or other requirement under section 112 of the Act"). Nonetheless, the Final Permit fails to identify Clean Air Act § 112(r)(1) as an "applicable requirement" for Owens-Brockway, and likewise, lacks conditions sufficient to "assure compliance" with this critical public safeguard.

The closest that the Final Permit comes to addressing the General Duty Clause is Final Permit Condition 11, which states that if the facility becomes subject to the accidental release regulations at 40 C.F.R. Part 68, the facility must file a Risk Management Plan and comply with Part 68. However, Risk Management Plan requirements relate to implementation of Clean Air Act § 112(r)(7), not § 112(r)(1)'s General Duty Clause. Furthermore, while DEQ reports that the Owens-Brockway Portland Plant is not currently subject to § 112(r)(7)'s Risk Management Plan requirements (Permit Review Report at 20), the facility *is* subject to the General Duty Clause.[25]

The only EPA Title V order that addresses what must be included in a Title V permit to assure compliance with Clean Air Act § 112(r)(1)'s General Duty Clause requirements appears to be *In the Matter of Shintech, Inc,* Order on Petition (1997).[26] In *Shintech*, the EPA concluded that while the General Duty Clause is an "applicable requirement" for Title V purposes, the Shintech permit did not need to include detailed information regarding how the facility must comply with the General Duty Clause. *Shintech* at 12. Rather, the EPA concluded that it was enough for the Shintech permit to include a generic permit condition consistent with 40 C.F.R. § 68.215. *Id.* Neither 40 C.F.R. part 68 nor *Shintech* apply in this case, however, because the Owens-Brockway plant is not currently subject to part 68, and § 68.215(a) expressly applies only to a "stationary source subject to this part 68." Thus, it would not make sense to incorporate the language from 40 C.F.R. § 68.215 into the Owens-Brockway permit, and the reasoning provided in the *Shintech* Order does not apply here.

Even if the Owens-Brockway plant were subject to part 68, simply incorporating the language of 40 C.F.R. § 68.215 into the Owens-Brockway permit would not be enough to assure compliance with the facility's General Duty Clause obligations under Clean Air Act § 112(r)(1). First, there is no indication in either the part 68 regulations or in the preamble to those regulations that the EPA promulgated those regulations to address how Title V permits are to assure compliance with Clean Air Act section 112(r)(1). *See* 61 Fed. Reg. at 31668. Indeed, 40 CFR § 68.215 does not even mention Clean Air Act section 112(r)(1). A permit that does not identify the source's obligations under section 112(r)(1) obviously cannot assure the source's compliance with those obligations. Furthermore, many years after *Shintech*, the D.C. Circuit confirmed in *Sierra Club,* 536 F.3d at 673, that a permitting authority is obligated to add monitoring, recordkeeping, and reporting requirements to a source's Title V permit where needed to assure the source's compliance with an applicable requirement. Clarifying a source's obligations under the Clean Air Act's General Duty Clause and developing monitoring,

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[25] Unlike Clean Air Act § 112(r)(7)'s Risk Management Plan requirements, which apply only to facilities that handle hazardous substances in amounts that exceed designated thresholds, § 112(r)(1)'s general duty clause applies to a facility that hands a regulated substance or any other extremely hazardous substance in any amount. *See, e.g.,* U.S. EPA, The General Duty Clause Fact Sheet, EPA 550-F-08-002 (March 2009), at 2, *available at* https://www.epa.gov/sites/production/files/2013-10/documents/gdc-fact.pdf. *See also* 59 Fed. Reg. 4493, 4493 (Jan. 31, 1994) ("The list of substances, threshold quantities, and accident prevention regulations promulgated under [part 68] do not limit in any way the general duty provisions under 112(r)(1).")

[26] *Available at* https://www.epa.gov/sites/production/files/2015-08/documents/shintech_decision1997.pdf

recordkeeping, and reporting sufficient to assure a source's compliance with those obligations falls squarely within what Congress intended to achieve by enacting the Title V operating permit program in 1990. The fact that a source's specific obligations under this requirement may be unique from those of other sources strongly supports the argument that a Title V permit must clarify what the source's obligations are and incorporate any conditions needed to assure the source's compliance with those obligations.

In sum, the Final Permit's failure to identify § 112(r)(1) as an applicable requirement and the lack of conditions sufficient to assure compliance with Owens-Brockway's § 112(r)(1) obligations contravenes 42 U.S.C. 7661c(a) and 40 C.F.R. §§ 70.6(a)(1) and (c)(1). Accordingly, EPA must object. EPA should instruct DEQ to revise the permit to identify § 112(a)(1)'s General Duty Clause as an "applicable requirement" and to require Owens-Brockway to: (1) identify the hazards which may result from accidental releases using appropriate hazard assessment techniques, (2) take whatever steps are needed to ensure that the facility is designed and maintained as needed to prevent releases, and (3) develop procedures and undertake other measures needed to minimize the consequences of any accidental releases which do occur.

F. The Final Permit Fails to Assure Compliance with the Plant Site Emission Limits (PSELs) for Lead (Pb) and Sulfur Dioxide (SO_2).

1. Relevant Permit Conditions to Claim F

Permit Condition 32: Sets annual PSELs for Lead and Sulfur Dioxide.

Permit Condition 33: Requires Permittee to monitor parameters and then determine compliance with PSELs using identified emission factors.

2. Specific Permit Deficiency

The Final Permit is deficient because it allows Owens-Brockway to utilize SO_2 and Pb emission factors to demonstrate compliance with applicable PSELs that greatly exceed the facility's actual emissions as demonstrated by the May 2019 source tests. Thus, the Final Permit does not "assure compliance" with the SO_2 and Pb PSELs as required by Title V. 42 U.S.C. 7661c(a); 40 C.F.R. §§ 70.6(a)(1), (c)(1).

In the cover letter to its 2020 Penalty Order, DEQ explained that the May 2019 test results showed that the facility's SO_2 and Pb emissions are "significantly higher" that the SO_2 and Pb emission factors incorporated into the Final Permit. Cover Letter to 2020 Penalty Order, at 1. In particular, for Furnace A, the 2019 testing revealed SO_2 average emissions of 3.23 lb/ton glass versus the SO_2 emission factor of 2.1 lb/ton glass set forth in Final Permit Condition 33.b.ii. 2020 Penalty Order, Section II, ¶ 22. Likewise, for Furnace D, which is subject to the same 2.1 lb/ton SO_2 emission factor in Final Permit Condition 33.b.ii, the testing revealed SO_2 emissions of 3.1 lb/ton glass. *Id.* The 2019 testing revealed similar disparities between the Final Permit's emission factor for Pb and the furnacess actual emissions. Final Permit Condition 33.b.ii identifies a Pb emission factor of 1.65×10^{-3} lbs/ton glass for each furnace. Yet the May 2019

testing revealed that Furnace's A's actual Pb emissions are 4.15 x 10^{-3} lbs/ton glass, and Furnace D's actual Pb emissions are 6.50 x 10^{-3} lbs/ton glass. 2020 Penalty Order, Section II, ¶ 24.

Though DEQ had the Source Test Report for the May 2019 testing by October 2019, DEQ chose to issue the Final Permit in December 2019 with SO_2 and Pb emission factors that are substantially lower than the actual furnace emissions revealed by the testing. DEQ provided no explanation in its Permit Review Report for how the Final Permit can assure the facility's compliance with the applicable SO_2 and Pb PSELs if it allows Owens-Brockway to calculate its emissions using emission factors that significantly exceed the furnaces' demonstrated actual emission rates.

Petitioners could not have raised their concern regarding the inadequacy of Owens-Brockway's SO_2 and Pb emission factors in their comments on the draft permit because the May 2019 source testing had not yet been performed. Accordingly, Petitioners can petition EPA to object to the Final Permit based on this deficiency even through it was not presented in their comments. 42 U.S.C. § 7661d(b)(2).

Petitioners appreciate that DEQ has ordered Owens-Brockway to perform additional testing to verify the furnaces' SO_2 and Pb emission rates. But until such time that the facility retests its emissions and DEQ revises the Final Permit to incorporate more accurate emission factors, there is no reason to believe that the emission factors included in Final Permit Condition 33.b.ii are sufficient to assure the facility's compliance with the applicable SO_2 and Pb PSELs. Thus, the Final Permit plainly does not assure the facility's compliance with the SO2 and Pb PSELs and EPA must object. At a minimum, EPA must object to DEQ's failure to provide a reasoned explanation for why the Final Permit is sufficient to assure compliance with the SO_2 and Pb PSELs despite use of emission factors that are signifcantly lower than warranted based on source-specific testing.

G. The Final Permit Unlawfully Omits an Enforceable Compliance Schedule to Bring Owens-Brockway Into Compliance with Applicable Opacity and PM Limits.

As demonstrated by the two penalty orders issued by DEQ after the close of the public comment period on the draft permit, recent monitoring and compliance testing demonstrates that the Owens-Brockway facility is not in compliance with applicable opacity and PM limitations. *Supra* at 4-6. In particular, both penalty orders demonstrate Owens-Brockway's ongoing violation of the 20% opacity limit in SIP Rule OAR 340-208-0110 (Final Permit Condition 17), and the 2020 Penalty Order unambiguously states that the facility's May 2019 source test results exceed the 0.10 gr/dscf PM limit from Oregon's SIP Rule OAR 340-226-0210 (Final Permit Condition 14). Nonetheless, DEQ issued the final permit without a compliance schedule*, i.e.*, "a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance…." 40 C.F.R. § 70.5(c)(8)(iii)(C). Given the absence of any indication that Owens-Brockway has already made changes at the facility to enable it to operate in compliance going forward, DEQ's failure to include a compliance schedule in the Final Permit contravenes 42 U.S.C. § 7661c(a) and 40 C.F.R. § 70.6(c)(3). Therefore, EPA must object. *See New York Public Interest Group, Inc. v. Johnson*, 427 F.3d 172, 182-83 (2nd Cir. 2005) (concluding that EPA was obligated to object to a permit that failed to include a compliance schedule).

The April 2019 Penalty Order and the May 2019 testing occurred well before DEQ's issuance of the Final Permit on December 10, 2019. Thus, DEQ was aware of the opacity and PM limit violations at the time that it issued the Final Permit. Furthermore, while the 2020 Penalty Order was issued after the Final Permit, it addressed opacity violations that DEQ at least suspected at the time of the April 2019 Penalty Order, and that were confirmed by monitoring data that Owens-Brockway was required to submit no later than April 29, 2019. 2019 Penalty Order, Section IV, ¶ 2. Thus, DEQ was in possession of the data at the time it issued the Final Permit. And, DEQ's statement in the January 2020 Order regarding the facility's non-compliance with the Final Permit's 0.10 gr/dscf PM limit was based on the May 2019 test results, which revealed PM emissions from Furnace D of 0.12 gr/dscf. *Supra* at 5. Thus, DEQ plainly was aware that the Owens-Brockway was "not in compliance with all applicable requirements at the time of permit issuance," 40 C.F.R. § 70.5(c)(8)(iii)(C), which, under Title V, necessitates inclusion of a compliance schedule in the facility's permit. *Id.* § 70.6(c)(3).

In fact, DEQ's 2019 Penalty Order made it clear that DEQ agrees Owens-Brockway needs a compliance plan, at least to achieve compliance with the 20% opacity limit. In particular, DEQ's 2019 Penalty Order instructed Owens-Brockway to, within 120 days of the order becoming final, "submit to DEQ for approval a comprehensive written Corrective Action Plan (CAP II) that includes an implementation schedule to achieve and maintain compliance with the opacity limit in Condition 11 of the [pre-existing] Permit [containing the 20% opacity limit]." 2019 Penalty Order, Section IV, ¶ 6. The Order goes on to provide specificity regarding the contents of the required plan, including, among other things, "[a] feasibility study of adding emission control devices including a baghouse, scrubber, ceramic filtration technology or electrostatic precipitator" to Furnaces A and D. *Id.*

Petitioners did not raise this issue in their comments on the draft permit because information regarding the facility's non-compliance with applicable requirements was not available during the public comment period. In particular, DEQ had not yet obtained the opacity monitoring data needed to determine the facility's compliance status and had not yet required Owens-Brockway to undertake the testing that revealed the facility's difficulties in complying with the 0.10 gr/dscf PM limit. Furthermore, DEQ had not yet decided to replace the 0.1 gr/dscf PM limit in the prior Title V permit with the more precise 0.10 gr/dscf PM limit—a limit that was exceeded in the May 2019 source test. Given that the grounds for this objection arose after the close of the comment period on the draft permit, it was impracticable, if not impossible, for Petitioners to raise this issue with reasonable specificity in their comments. Thus, doing so was not a prerequisite for petitioning EPA to object to the Final Permit based on this permit deficiency. 42 U.S.C. § 7661d(b)(2).

While Petitioners appreciate DEQ's efforts to enforce Clean Air Act requirements at the Owens-Brockway plant, a Title V compliance schedule provides additional community benefits that are not provided by a penalty order, or even a judicial consent decree. First, Title V makes the required remedial measures federally enforceable, which means that they can be enforced via a citizen suit filed under Clean Air Act § 304 if necessary. Second, Title V requires that the facility regularly file publicly available reports documenting its compliance with compliance schedule requirements. Under circumstances such as here, where a facility is plainly not

operating in compliance with an applicable requirement at the time of permit issuance, Title V does not allow the permitting authority to issue the facility a Title V permit without an enforceable schedule of remedial measures designed to bring the facility into compliance. Accordingly, EPA must object and instruct DEQ to add a compliance schedule to the Final Permit that is designed to achieve prompt compliance with the applicable PM and opacity limits.

CONCLUSION

For the reasons set forth herein, EPA must object to the Title V permit prepared by DEQ for Owens-Brockway's Portland, Oregon container glass manufacturing plant.

Respectfully submitted on February 4, 2020, on behalf of Cully Air Action Team, Portland Clean Air, Oregon Environmental Council, and Verde.

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LIST OF ATTACHMENTS

A. Earthjustice, Comments on the Draft Title V Operating Permit for Owens-Brockway Glass Container Inc., Permit No. 26-1876-TV-01 (Oct. 25, 2018)
B. Letter from Steven A. Dietrich, Oregon DEQ, to Plant Manager, Owens-Brockway Glass Container, Inc., dated Dec. 10, 2019 (Permit Issuance Letter)
C. Final Title V Permit for Owens-Brockway (Permit No. 26-1976-TV-01, Permit Review Report, and DEQ Response to Comments
D. Public Notice of Draft Owens-Brockway Title V Permit Renewal
E. Oregon DEQ, Notice of Civil Penalty Assessment and Order, Case No. AQ/V-NWR-2019-016, dated Apr. 22, 2019 (2019 Penalty Order)
F. Owens-Brockway Source Test Review Report for May 2019 Testing (Oct. 30, 2019)
G. Oregon DEQ, Notice of Civil Penalty Assessment and Order, Case No. AQ/V-NWR-2019-260, dated Jan. 24, 2020 (2020 Penalty Order)
H. Email from George Yun, DEQ, to Keri Powell, dated Jan. 7, 2020
I. Air Operating Permit for Ardagh Glass, Inc., Puget Sound Clean Air Agency, Permit No. 11656, issued June 6, 2007
J. Title V Operating Permit for Ardagh Glass, Inc., North Carolina Department of Environmental Quality, Permit No. 03713T37, issued Mar. 22, 2018
K. Part 70 Operating Permit, Owens-Brockway Glass Container, Inc.-#10 Atlanta Plant, Georgia Environmental Protection Division, Permit No. 3221-121-0020-V-04-0, effective date Feb. 16, 2016