

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. EPCRA-10-2021-0155
)
OWENS-BROCKWAY GLASS) **CONSENT AGREEMENT**
CONTAINER, INC,)
)
Portland, Oregon)
)
Respondent.)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045.

1.2. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Owens-Brockway Glass Container, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of EPCRA together with the specific provisions of EPCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.22 and 372.30, requires the owner or operator of a facility covered by Section 313 to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350 1 (“Form R”) for each toxic chemical referenced in Section 313(c) of EPCRA and listed in 40 C.F.R. § 372.65 that the facility manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical threshold specified in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

3.2. The regulation at 40 C.F.R. § 372.22 provides a facility that meets each of the following criteria in a calendar year is a covered facility for that calendar year and must report under 40 C.F.R. § 372.30 by July 1 of the following year:

- a. The facility has 10 or more full time employees
- b. The facility is in a SIC major group or industry code or NAICS code listed in 40 C.F.R. §§ 372.22(b) and 372.23; and
- c. The facility manufactured, imported, processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. §§ 372.25, 372.27, or 372.28.

3.3. The regulation at 40 C.F.R. § 372.3 defines the term “manufacture” as, *inter alia*, to produce, prepare, import, or compound a toxic chemical.

3.4. The regulation at 40 C.F.R. § 372.3 defines the term “process” as, *inter alia*, the preparation of a toxic chemical, after its manufacture, for distribution in commerce as part of an article containing the toxic chemical.

3.5. The toxic chemicals which are subject to the reporting requirement of 40 C.F.R. § 372.30 are listed in 40 C.F.R. § 372.65.

3.6. Chromium compounds is a chemical compound category listed in 40 C.F.R. § 372.65. The regulation at 40 C.F.R. § 372.25 provides that the threshold quantity for Chromium compound reporting is 25,000 pounds manufactured or processed each year.

3.7. Respondent is the owner and operator of a glass manufacturing facility located at 9710 NE Glass Plant Road, Portland, Oregon (the “facility”).

3.8. Respondent manufactures green glass at the facility.

3.9. During calendar years 2017 and 2018, the facility had 10 or more full-time employees.

3.10. The facility is included in NAICS code 327213, which is included in the list of covered industry codes in 40 C.F.R. § 372.23.

3.11. During calendar years 2017 and 2018, Respondent manufactured and processed Chromium compounds in excess of the threshold quantity.

3.12. Therefore, the facility was a covered facility under 40 C.F.R. § 372.22 for calendar years 2017 and 2018 and was required to report under 40 C.F.R. § 372.30 by July 1 of the following year.

3.13. Respondent failed to submit Form Rs for the facility for calendar years 2017 and 2018 until June 7, 2021.

3.14. As such, Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30 by failing to submit Form Rs for the facility for calendar years 2017 and 2018 by July 1, 2018 and 2019 respectively.

3.15. Under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$59,017 for each such violation. In accordance with Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day a violation of Section 313 of EPCRA, 42 U.S.C. § 11023 continues constitutes a separate violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$38,900 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Elizabeth Walters
U.S. Environmental Protection Agency
Region 10
Walters.Elizabeth@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil

action under Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III, and is currently in compliance with all applicable EPCRA requirements at each of the facilities under its control.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8-18-21

FOR RESPONDENT:



BILL MANN, Vice President of Operations
North America Owens-Brockway Glass Container,
Inc.

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

Digitally signed by
EDWARD KOWALSKI
Date: 2021.09.01
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EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2021-0155
)	
OWENS-BROCKWAY GLASS)	FINAL ORDER
CONTAINER, INC.,)	
)	
Portland, Oregon,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under EPCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of EPCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2021.

**RICHARD
MEDNICK**

Digitally signed by
RICHARD MEDNICK
Date: 2021.09.01
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RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Owens-Brockway Glass Container, Inc., Docket No.: EPCRA-10-2021-0155**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Andrew Futerman
U.S. Environmental Protection Agency
C/O Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Futerman.andrew@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered via electronic mail to:

Geoffrey Tichenor, Esq.
Stoel Rives LLP
760 SW Ninth Ave., Suite 3000
Portland, Oregon 97205
Geoffrey.tichenor@stoel.com

DATED this _____ day of _____, 2021.

TERESA
YOUNG

Digitally signed by
TERESA YOUNG
Date: 2021.09.01
13:40:46 -07'00'

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10