



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

**MAY 15 2009**

REPLY TO THE ATTENTION OF:

**AE-17J**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Susan L. Smith  
Intellectual Property & Environmental Counsel  
Owens-Illinois, Inc.  
Three O-I Plaza – Legal Department  
One Michael Owens Way  
Perrysburg, Ohio, 43551-2999

Dear Ms. Smith:

Enclosed are an Administrative Consent Order (ACO) and a filed stamped Consent Agreement and Final Order (CAFO) which resolves Owens-Brockway Glass Container, Inc, CAA Docket No. CAA-05-2009-0020 . As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY 15 2009 .

Pursuant to paragraph 23 of the CAFO, Owens-Brockway Glass Container, Inc must pay the \$76,725 civil penalty within 30 days of the date the CAFO was filed, JUN 15 2009. The check must display the case docket number, CAA-05-2009-0020 , and the billing document number, 2750903A023 .

Please direct any questions regarding this case to Susan Tennenbaum, Associate Regional Counsel (312) 886-0273.

Sincerely,

Bonnie Bush  
Chief  
Air Enforcement and Compliance Assurance (MI/WI)

Enclosure

cc: Ray Pilapil, Manager  
Bureau of Air, Compliance and Enforcement Section  
Illinois Environmental Protection Agency

RECEIVED

MAY 15 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of:	)	Docket No. CAA-05-2009-0020
	)	
Owens-Brockway Glass Container Inc.	)	Proceeding to Assess a Civil Penalty
Streator, Illinois,	)	Under Section 113(d) of the Clean Air
	)	Act, 42 U.S.C. § 7413(d)
Respondent.	)	
_____	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Owens-Brockway Glass Container Inc. (Owens-Brockway), a corporation doing business in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. On February 21, 1980, EPA approved, as part of the federally enforceable State Implementation Plan (SIP) for Illinois, 35 Ill. Adm. Code § 212.321. 45 Fed. Reg. 11493. This rule became effective February 21, 1980.

10. 35 Ill. Adm. Code § 212.321(a) limits particulate matter (PM) emissions during any one hour period from a process emission unit, for which construction or modification commenced on or after April 14, 1972, to rates of less than those computed by the equation  $E = A(P)^B$ , where E is the allowable emission rate (lbs/hour), P is the process weight rate (tons/hour), and A and B are constants of value 2.54 and 0.534, respectively.

11. Title V of the Act, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including “major sources.” Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32295. These regulations are codified at 40 C.F.R. Part 70.

12. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

13. EPA granted interim approval to Illinois’ Clean Air Act Permit Program (CAAPP) with an effective date of March 7, 1995. See 40 C.F.R. Part 70, Appendix A. EPA granted final

approval effective on November 30, 2001. See 40 C.F.R. Part 70, Appendix A.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations and Alleged Violations**

17. Respondent owns and operates a glass container manufacturing facility at 901 North Shabbona Street, Streator, Illinois 61364.

18. On July 11, 2001, the Illinois Environmental Protection Agency (IEPA) issued to Respondent, Construction Permit Number 01020067, for the addition of electric boost on Glass Melting Furnace H. Condition 2.3.b., which incorporates Illinois SIP provision 35 Ill. Adm. Code § 212.321(a), limits PM emissions during any one hour period from Furnace H to rates of less than those computed by the equation  $E = A(P)^B$ ; where E is the allowable emission rate, P is the process weight rate, and A and B are unit-less constants of value 2.54 and 0.534, respectively.

19. On December 23, 2002, IEPA issued Title V Clean Air Act Permit Program (CAAPP) Permit 95090064 (Title V Permit) to Respondent. This permit covers several air

emission sources, including the glass melting furnace, Furnace H.

20. Condition 7.3.3.c. of Respondent's Title V CAAPP Permit incorporates the Illinois SIP provision 35 Ill. Adm. Code § 212.321(a), as detailed above in Paragraph 18.

21. Complainant alleges that from September 14, 2005 to October 4, 2005, Respondent violated its Title V permit, Section 502 of the Act, 40 C.F.R. § 70.7(b), and the Illinois SIP at 35 Ill. Adm. Code § 212.321(a), by failing to maintain compliance with the allowable PM emission rate determined by the methodology detailed in Paragraph 18, above.

#### **Civil Penalty**

22. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$76,725.

23. Within 30 days after the effective date of this CAFO, Respondent must pay a \$76,725 civil penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, In the Matter of Owens-Brockway Glass Container Inc., the docket number of this CAFO and the billing document number.

24. Respondent must send notice of the electronic funds transfer, in paragraph 23, above, including Respondent's name, complete address, the case docket number, and the billing document number to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Susan Tennenbaum (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

25. This civil penalty is not deductible for federal tax purposes.

26. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

27. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **General Provisions**

28. This CAFO settles and resolves only Respondent's liability for Federal civil penalties for the violations alleged in this CAFO.

29. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

30. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 28, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

31. Respondent certifies that it is complying fully with Title V of the Act, 40 C.F.R. § 70.7(b) and the Illinois SIP at 35 Ill. Adm. Code § 212.321(a).

32. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

33. The terms of this CAFO bind Respondent, its successors, and assigns.

34. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

35. Each party agrees to bear its own costs and attorneys' fees in this action.

36. This CAFO constitutes the entire agreement between the parties.

**Owens-Brockway Glass Container Inc., Respondent**

5/5/09  
Date

Kenneth P. Sokol  
Kenneth P. Sokol, Streator Plant Manager  
Owens-Brockway Glass Container Inc.

**United States Environmental Protection Agency, Complainant**

05/13/09  
Date

*Cheryl L. Newton*  
Cheryl L. Newton, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)



**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of:**

**Owens-Brockway Glass Container Inc.**

**Docket No. CAA-05-2009-0020**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5/14/09  
Date

Walter W. Kovalich  
for  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5

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**CERTIFICATE OF MAILING**

I, Tracy Jamison, certify that I hand delivered the original of the Consent Agreement and Final Order, Docket number **CAA-05-2009-0020** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Owens-Brockway Glass Container, Inc by placing them in the custody of the United States Postal Service addressed as follows:

Susan L. Smith  
Intellectual Property & Environmental Counsel  
Owens-Illinois, Inc.  
Three O-I Plaza – Legal Department  
One Michael Owens Way  
Perrysburg, Ohio 43551-2999

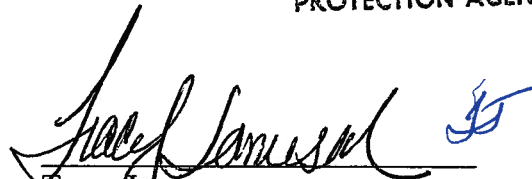
I also certify that a copy of the CAFO was sent by first-class mail to:

Ray Pilapil, Manager  
Bureau of Air  
Compliance and Enforcement Section  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

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MAY 15 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

on the 15 day of May 2009.

  
Tracy Jamison  
Office Automation Clerk  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 01874269