

1 any factual allegations, legal conclusions, or liability herein or otherwise related to this MAO or the
2 Notice and the exhibits thereto.

3 3. As in the Notice, in this MAO the “Facility” means the glass manufacturing facility
4 operated by Respondent and located at 9710 NE Glass Plant Road in Portland, Oregon.

5 4. As in the Notice, in this MAO the “Permit” means Respondent’s Oregon Title V
6 Operating Permit No. 26-1876-TV-01, issued by DEQ on December 10, 2019.

7 5. Notwithstanding Section I, Paragraph 2, DEQ alleges that until Respondent
8 installs and begins operating pollution controls on Furnace D (also referred to as GM4) or ceases
9 to operate Furnace D as required under Section II, Paragraph 3 of this MAO, Respondent’s
10 continued operation of Furnace D may result in additional violations of the 0.10 gr/dscf Total
11 PM limit (Condition 14 of the Permit in effect or as renumbered).

12 6. Notwithstanding Section I, Paragraph 2, DEQ and Respondent recognize that the
13 Environmental Quality Commission (EQC) has the authority to impose civil penalties and to issue
14 an abatement order for violations of conditions of the Permit. Therefore, pursuant to ORS
15 183.417(3), DEQ and Respondent wish to settle violations referred to in Section III, Paragraph 1 of
16 the Notice, as amended by Section I, Paragraph 5 of this MAO. These are Class I violations
17 according to OAR 340-012-0055(1)(o). DEQ’s amended findings and the calculation of the civil
18 penalty for these violations is attached and incorporated in Amended Exhibit 1. As described in
19 Amended Exhibit 1, the civil penalty for Violation No. 1 is changed from \$979,854 to \$624,556.

20 7. Exhibit 2 of the Notice is amended reducing the C factor of the civil penalty from 2
21 to -3. This results in a change in the civil penalty for Violation No. 2 from \$36,000 to \$30,000. The
22 amended findings and determination of the civil penalty is attached and incorporated as Amended
23 Exhibit 2.

24 8. Exhibit 3 remains unchanged, with a civil penalty of \$7,200.

25 9. The total civil penalty is reduced from **\$1,023,054** to **\$661,756**.

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1 10. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations
2 alleged in the Notice and as amended by this MAO, will be treated as prior significant actions in the
3 event a future violation occurs.

4 11. Respondent waives any and all rights and objections Respondent may have to the
5 form, content, manner of service and timeliness of the Notice; to a contested case hearing and
6 judicial review of the Notice; and to service of a copy of this MAO.

7 12. This MAO resolves all civil claims of DEQ, based upon the facts alleged, for the
8 violations expressly alleged in the Notice as amended by the MAO. This MAO is not intended to
9 limit, in any way, DEQ's right to proceed against Respondent in any forum for any past or future
10 violations not expressly settled herein. This MAO is not intended to limit, in any way, DEQ's right
11 to make future revisions to Respondent's Permit.

12 13. Respondent releases and waives any and all claims of any kind, known or unknown,
13 past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or
14 agents, arising out of the matters and events relating to the matter set out in the Notice and this
15 MAO. Any and all claims includes but is not limited to any claim under 42 USC § 1983 et seq.,
16 any claim under federal or state law for damages, declaratory, or equitable relief, and any claim for
17 attorney's fees or costs.

18 14. This MAO shall be binding on Respondent and its respective successors, agents, and
19 assigns. The undersigned representative of Respondent certifies that he or she is fully authorized to
20 execute and bind Respondent to this MAO. No change in ownership, corporate or partnership status
21 of Respondent, or change in the ownership of the properties or businesses affected by this MAO
22 shall in any way alter Respondent's obligation under this MAO, unless otherwise approved in
23 writing by DEQ through an amendment to this MAO.

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1 15. Respondent and DEQ hereby agree to the following stipulated penalties:

2 a. If Respondent fails to satisfactorily complete the requirements contained in
3 Section II, Paragraphs 3.a, 3.b, 3.c.ii or 3.d, upon receipt of a written Penalty
4 Demand Notice from DEQ, Respondent shall pay a civil penalty of \$2,400 for each
5 day of each violation of this MAO until such violation is corrected.

6 b. If Respondent fails to comply with the interim limit in Section II, Paragraph
7 3.c.i, upon receipt of a written Penalty Demand Notice from DEQ, Respondent shall
8 pay \$18,000 for each violation (each three hour block period over the interim limit).

9 c. If Respondent fails to comply with the 20% opacity limit (Condition 17 of
10 the Permit, in effect or as renumbered), upon receipt of a written Penalty Demand
11 Notice from DEQ, Respondent shall pay \$18,000 per violation.

12 d. If Respondent fails to timely report excess emissions to DEQ as required
13 under Conditions 43.a or 43.b of the Permit in effect, or as renumbered, upon receipt
14 of a written Penalty Demand Notice from DEQ, Respondent shall pay \$6,600 for
15 each violation.

16 16. DEQ and Respondent agree that the interim limit in Section II, Paragraph 3.c.i is a
17 limit that applies to average opacity during each three hour block, with the first block beginning on
18 midnight of the 10th business day following the MAO Effective Date.

19 17. Respondent and DEQ agree that Respondent's failure to conduct preventative
20 maintenance is not a defense against violations of the interim limit in Section II, Paragraph 3.c.i.

21 18. Within twenty (20) days of receipt of a Penalty Demand Notice from DEQ,
22 Respondent may request a hearing to contest the Penalty Demand Notice. With respect to stipulated
23 penalties issued according to Section I, Paragraph 15.a or 15.b of this MAO, Respondent agrees
24 that, at any such hearing, the issue shall be limited to Respondent's compliance or noncompliance
25 with this MAO. With respect to stipulated penalties issued according to Section I, Paragraphs 15.c
26 or 15.d of this MAO, Respondent agrees that the issue at any hearing shall be limited to
27 Respondent's compliance or noncompliance with the Permit in effect or as renumbered. The

1 amount of the stipulated civil penalty is established in advance by this MAO and is not a contestable
2 issue.

3 19. The terms of this MAO may be amended by mutual agreement of DEQ and
4 Respondent. In addition, DEQ may approve at its discretion Respondent's request for additional
5 time to complete any of the requirements specified in Section II, Paragraph 3.b, provided that the
6 request is submitted in advance of the due date.

7 20. If any event occurs that is beyond Respondent's reasonable control and that may
8 cause or delay a deviation in Respondent's satisfactorily completing the requirements contained in
9 Section II, Paragraphs 3.a or 3.b despite Respondent's reasonable efforts ("Force Majeure"),
10 Respondent will promptly, upon learning of the event, notify DEQ verbally of the cause of the delay
11 or deviation, its anticipated duration, the measures that have been taken or will be taken to prevent
12 or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out
13 such measures. Respondent will confirm in writing this information within five working days of the
14 verbal notification. Failure to comply with these notice requirements precludes Respondent from
15 asserting Force Majeure for the event and for any additional delay it causes. If Respondent
16 demonstrates to DEQ's reasonable satisfaction that the delay or deviation has been or will be caused
17 by a Force Majeure, DEQ will extend the times for performance of the affected requirements in
18 Section II, Paragraphs 3.a or 3.b, as appropriate, and such delays or deviations caused by a Force
19 Majeure shall not constitute a violation of this MAO. Circumstances or events constituting Force
20 Majeure might include, without limitation, acts of God, unforeseen strikes or work stoppages,
21 unanticipated site conditions, fire, explosion, riot, sabotage, war, and delays in receiving a
22 governmental approval or permit. Normal inclement weather, a consultant's failure to provide
23 timely reports, increased cost of performance or changed business or economic circumstances may
24 not be considered Force Majeure.

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1 criteria for the full contribution amount of \$529,404. Within 30 days of DEQ's approval of the SEP
2 application(s), Respondent must transmit payment of no less than \$529,404 to the third party
3 organization(s) and provide DEQ with documentation of the transmittal(s). If, at the end of SEP
4 application period, as may be extended, Respondent demonstrates to DEQ's reasonable satisfaction
5 that any portion of the \$529,404 cannot be used on a SEP meeting DEQ's criteria, then DEQ will
6 direct Respondent in writing to transmit payment of such remaining portion of the \$529,404 to the
7 State of Oregon within 30 days.

8 3. Requiring Respondent to comply with the following schedule and conditions:

9 a. By June 30, 2022, Respondent must do one of the following:

10 i. Submit to DEQ an administratively complete Notice of Approval
11 application and permit modification application, including complete
12 engineering specifications and vendor design, to install pollution control
13 devices on Furnace D (GM4) (the PCD Application). Respondent's pollution
14 controls proposal must reduce filterable PM emissions by at least 95 percent
15 and ensure continuous compliance with the following limits that apply to
16 Furnace D: 0.10 gr/dscf Total PM limit; 20% opacity limit; and the applicable
17 NSPS subpart CC Filterable PM limit, 40 CFR 60.292 (0.1 g/kg or 0.2 lb/ton).

18 OR

19 ii. Notify DEQ in writing that Furnace D has been permanently shut
20 down and submit an application to DEQ to terminate coverage under the Permit.

21 b. If Respondent does not notify DEQ by June 30, 2022 according to Section
22 II, Paragraph 3.a.ii, Respondent must:

23 i. Starting with the month of July 2022 (submittal deadline August 12,
24 2022), submit monthly progress reports to DEQ until the pollution control
25 devices are installed and operating. The monthly progress reports must be
26 submitted within ten business days after the close of the previous calendar month
27

1 and must document progress on the engineering, permitting, purchasing, site
2 preparation, construction and installation of the pollution control devices;

3 ii. Within 3 months of DEQ's written approval of the PCD
4 Application, execute a contract to purchase the pollution control devices with
5 a vendor and submit a copy of the contract to DEQ;

6 iii. Within 10 months of DEQ's written approval of the PCD
7 Application, complete construction drawings and submit a copy to DEQ;

8 iv. Within 13 months of DEQ's written approval of the PCD
9 Application, begin on-site construction at the Facility to install the pollution
10 control devices and submit written notification of the construction start date to
11 DEQ;

12 v. Within 18 months of DEQ's written approval of the PCD
13 Application:

14 (1) Complete the installation of the pollution control devices
15 on Furnace D and submit a Notice of Completion to DEQ; and

16 (2) Subject to DEQ's incorporation of changes in Respondent's
17 Title V operating permit in response to the PCD Application, begin
18 operating the pollution control devices on Furnace D in
19 compliance with the modified Permit.

20 vi. Within 90 days of installing and operating the pollution control
21 devices according to Section II, Paragraph 3.b.v, complete source testing to
22 evaluate compliance with the 0.10 gr/dscf Total PM limit and the applicable
23 NSPS subpart CC Filterable PM limit, 40 CFR 60.292 (0.1 g/kg or 0.2 lb/ton)
24 and to demonstrate that the control device achieves at least a 95 percent
25 filterable PM reduction efficiency (mass basis). To enable testing, Respondent
26 shall design and install, in accordance with EPA Method 1, accessible
27 sampling ports at the inlet and the outlet to the control device.

1 c. From the MAO Effective Date until Respondent notifies DEQ according to
2 Section II, Paragraph 3.a.ii or pollution control devices are installed and operating on
3 Furnace D according to Section II, Paragraph 3.b.v,

4 i. Comply with the following interim limit: the average opacity of
5 Furnace D emissions, as measured by the COMS, must not exceed 8.5%,
6 excluding any uncombined water, for any three hour block period (i.e., the
7 average of the thirty consecutive six-minute periods within the block must not
8 exceed 8.5%); and

9 ii. Submit six-minute COMS data for Furnace D to DEQ for each
10 calendar quarter, by no later than 30 days after the end of the preceding quarter.
11 The submittal must identify any three hour block period (the average of thirty
12 consecutive six-minute averages) that exceed 8.5%, excluding any uncombined
13 water, provide an explanation for the cause of the elevated opacity during that
14 period, and describe any corrective actions taken.

15 d. Within 30 days of the MAO Effective Date, submit a COMS preventative
16 maintenance plan to DEQ for review and approval. To be approvable, the plan must include
17 a preventative maintenance schedule with a consistent frequency, a description of tasks
18 involved in preventative maintenance, a procedure for recordkeeping, and a copy of the
19 manufacturer's manual for the COMS.

20 4. Written documentation to demonstrate compliance with the requirements in
21 Section II, Paragraph 3 must be submitted to George Yun at Oregon DEQ, 700 NE Multnomah
22 Street, Suite 600, Portland, OR 97232 or George.Yun@deq.state.or.us with a copy to Becka
23 Puskas at Oregon DEQ, 700 NE Multnomah Street, Suite600, Portland, OR 97232 or
24 Becka.Puskas@deq.state.or.us.

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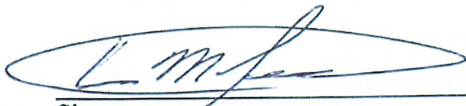
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OWENS-BROCKWAY GLASS CONTAINER, INC.
(RESPONDENT)

10/21/2021
Date



Signature
Timothy Connors

Name (print)

Managing Director O-I Americas North
Title (print)

DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

10/22/2021
Date



Kieran O'Donnell, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505

AMENDED EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 1 Exceeding the 0.10 gr/dscf Total PM emission limit for Furnace D, in violation of Condition 14 of the Permit and ORS 468A.045(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(o).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V permit.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and initially receives a value of 27 according to OAR 340-012-0145(2)(a)(C) and (D). Respondent has: 20 Class II violations in case no. AQ/V-NWR-2009-204 issued April 5, 2010; 18 Class II violations in case no. AQ/V-NWR-2011-092, issued on August 31, 2011; three Class II violations in case no. AQ/V-NWR-2012-046 issued on October 1, 2012 and one Class II violation in case no. AQ/V-NWR-2013-068, which were combined into a single Mutual Agreement and Final Order that became final on July 23, 2013; two Class II violations in case no. AQ/V-NWR-2019-016; one Class I and four Class II violations in case no. AQ/V-NWR-2019-260, issued on January 24, 2020; and three Class II violations in case no. AQ/V-NWR-2020-042, issued on March 19, 2020. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P will not exceed 10.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0. According to OAR 340-012-0145(4)(e), DEQ will set the O factor at 0 when assessing separate penalties for each occurrence of the violation.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. As a permittee, Respondent is presumed to have knowledge of the requirements in the Permit, including emission limits. Respondent has actual knowledge that Furnace D has not been in continuous compliance with the Condition 14 Total PM emission limit since April 22, 2020. Respondent conducted a PM source test in May 2019, and passed due to rounding conventions (see Notice, footnote 1). In case no. AQ/V-NWR-2019-260, issued on January 24, 2020, DEQ notified Respondent that the same result (0.12 gr/dscf) would be a violation under Condition 14 of the Permit renewal issued on December 10, 2019, and ordered Respondent to retest. Respondent source tested Furnace D in June 2020 and August 2020 and reported exceedances of the 0.10 gr/dscf limit to DEQ in its source test reports, submitted on July 27, 2020 and October 2, 2020, respectively. Those exceedances were confirmed by DEQ's source test review memos sent to Respondent on October 2, 2020 and November 19, 2020, respectively. The exceedances were also communicated to Respondent in a Pre-Enforcement Notice issued by DEQ on November 19, 2020. As of the date of the Notice, Respondent had not notified DEQ of any corrective actions taken to reduce Total Particulate Matter emissions from Furnace D and Respondent had not demonstrated a return to compliance with Condition 14 of the Permit. Thus, Respondent failed to act intentionally with actual knowledge of the requirement.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Pursuant to Section II of the MAO, Respondent has agreed to comply with an interim opacity limit to mitigate violations of 0.10 gr/dscf Total PM limit in the Permit, and to install pollution controls on Furnace D as a permanent solution if Respondent decides to continue operating Furnace D past June 30, 2022.

GRAVITY BASED PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 0 + 8 + -3)] \\ &= \$6,000 + (\$600 \times 15) \\ &= \$6,000 + \$9,000 \\ &= \$15,000 \end{aligned}$$

In accordance with ORS 468.140(2), each day of violation constitutes a separate offense. DEQ is using its enforcement discretion to assess a separate civil penalty for each complete calendar quarter from April 22, 2020 through the date of the Notice, that Respondent exceeded the Condition 14 Total PM limit in the Permit. Therefore, DEQ is assessing a \$15,000 civil penalty for each of the four calendar quarters of the violation.

$$\$15,000 \times 4 \text{ occurrences} = \$60,000$$

ECONOMIC BENEFIT

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$564,556. Of this total EB amount, \$72,618 is the amount Respondent gained by delaying spending an estimated \$625,715* in capital costs to install pollution control devices to reduce PM emissions from Furnace D. These costs should have been incurred on or before April 22, 2020, and this estimate assumes that they would be incurred by June 30, 2022. \$491,938 is the amount Respondent gained by avoiding spending an estimated \$669,682 in operation and maintenance costs for the pollution controls between April 22, 2020 and June 30, 2022 (\$334,841* per year for two years). This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

**Note:* The capital cost and annual operating cost figures are from Respondent's Regional Haze Four Factor Analysis report submitted to DEQ on June 12, 2020 (PM Baghouse Costs for Furnace D). The EB calculation excludes cost of "Portland Beautification Option" from the capital cost estimate.

TOTAL PENALTY

According to OAR 340-012-0045, the total civil penalty is the gravity based penalty of \$60,000 plus the economic benefit of \$564,556. Thus, the total civil penalty for Violation No. 1 is \$624,556

AMENDED EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION No. 2: Respondent violated Condition 17 of the Permit and ORS 468A.045(2) by causing or allowing opacity levels from Furnace D to be equal to or greater than 20% opacity based on a six minute average.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(d).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(a)(A) because Respondent is a federal major source as defined in OAR 340-200-0020.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$6,000 for a Class II, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(A) because Respondent has a Title V permit.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and initially receives a value of 27 according to OAR 340-012-0145(2)(a)(C) and (D). Respondent has: 20 Class II violations in case no. AQ/V-NWR-2009-204 issued April 5, 2010; 18 Class II violations in case no. AQ/V-NWR-2011-092, issued on August 31, 2011; three Class II violations in case no. AQ/V-NWR-2012-046 issued on October 1, 2012 and one Class II violation in case no. AQ/V-NWR-2013-068, which were combined into a single Mutual Agreement and Final Order that became final on July 23, 2013; two Class II violations in case no. AQ/V-NWR-2019-016; one Class I and four Class II violations in case no. AQ/V-NWR-2019-260, issued on January 24, 2020; and three Class II violations in case no. AQ/V-NWR-2020-042, issued on March 19, 2020. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P will not exceed 10.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0. According to OAR 340-012-0145(4)(e), DEQ will set the O factor at 0 when assessing separate penalties for each occurrence of the violation.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent's Permit expressly prohibits opacity levels of 20% or greater based on a six minute average. As described in the Notice, Respondent's Facility has a history of 20% opacity violations at both furnaces dating back to at least 2009. Respondent has actual knowledge of the 20% opacity limit, and its history of violations because those violations have been addressed in formal enforcement as follows: case no. AQ/V-NWR-2009-204 (20 opacity violations); case no. AQ/V-NWR-2011-092 (18 opacity violations); case no. AQ/V-NWR-2012-046 (three opacity violations); case no. AQ/V-NWR-2013-068 (one opacity violation); case no. AQ/V-NWR-2019-016 (two opacity violations); case no. AQ/V-NWR-2019-260 (two opacity violations); and case no. AQ/V-NWR-2020-042 (one opacity violation). Like the opacity violations addressed by previous formal enforcement cases, the April 23, 2020 opacity violation described in the Notice was due to mechanical or process failures. By failing to take adequate corrective actions to address these mechanical or process failures or otherwise prevent ongoing intermittent opacity violations, despite a history of such violations and formal enforcement, Respondent failed to act intentionally with actual knowledge of the requirement.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Pursuant to Section II of the MAO, Respondent has agreed to an interim opacity limit to mitigate violations of the 20% opacity limit in the Permit, and to install pollution controls on Furnace D as a permanent solution if Respondent decides to continue operating Furnace D past June 30, 2022.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$564,556. Of this total EB amount, \$72,618 is the amount Respondent gained by delaying spending an estimated \$625,715* in capital costs to install pollution control devices to reduce PM emissions and achieve consistent compliance with the 20% opacity limit for Furnace D. These costs should have been incurred on or before April 22, 2020, and this estimate assumes that they would be incurred by June 30, 2022. \$491,938 is the amount Respondent gained by avoiding spending an estimated \$669,682 in operation and maintenance costs for the pollution controls between April 22, 2020 and June 30, 2022 (\$334,841* per year for two years). This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model. This economic benefit is not included in the penalty calculation below because it is already captured in Amended Exhibit 1.**

**Note:* The capital cost and annual operating cost figures are from Respondent's Regional Haze Four Factor Analysis report submitted to DEQ on June 12, 2020 (PM Baghouse Costs for Furnace D). The EB calculation excludes cost of "Portland Beautification Option" from the capital cost estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 0 + 8 + -3)] + \0^{**}
= $\$6,000 + (\$600 \times 15) + \$0^{**}$
= $\$6,000 + \$9,000 + \$0^{**}$
= $\$15,000$

Respondent has two Class II, major magnitude violations as described in Section II, Paragraphs 12-15 and Section III, Paragraph 2 of the Notice, which occurred on April 23, 2020 and March 13, 2021. DEQ is using its enforcement discretion to assess a separate civil penalty for each occurrence of the violation.

\$15,000 per violation x two occurrences of the violation equals a total civil penalty of \$30,000.