IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA and OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY, Plaintiffs, v. OWENS-BROCKWAY GLASS CONTAINER INC. Defendant.	)	Civil Action No. [_____] CONSENT DECREE

TABLE OF CONTENTS

I. JURISDICTION AND VENUE 5
II. APPLICABILITY 6
III. DEFINITIONS 6
IV. COMPLIANCE REQUIREMENTS 15
V. CIVIL PENALTY 37
VI. ENVIRONMENTAL MITIGATION PROJECT 38
VII. PERMITS 39
VIII. EMISSION CREDIT GENERATION 40
IX. REPORTING REQUIREMENTS 42
X. STIPULATED PENALTIES 44
XI. FORCE MAJEURE 50
XII. DISPUTE RESOLUTION 52
XIII. INFORMATION COLLECTION AND RETENTION 54
XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS 56
XV. COSTS 60
XVI. NOTICES 60
XVII. SALES OR TRANSFER OF OPERATIONAL OR OWNERSHIP INTERESTS 62
XVIII. EFFECTIVE DATE 64
XIX. RETENTION OF JURISDICTION 64
XX. MODIFICATION 64
XXI. TERMINATION 64
XXII. PUBLIC PARTICIPATION 65
XXIII. SIGNATORIES/SERVICE 66
XXIV. INTEGRATION 66
XXV. APPENDIX 66
XXVI. FINAL JUDGMENT 67

Concurrently with the lodging of this Consent Decree, co-Plaintiffs, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the Oklahoma Department of Environmental Quality ("ODEQ") have filed a Complaint in this action seeking civil penalties and injunctive relief from the Defendant, Owens-Brockway Glass Container Inc. ("Owens-Brockway") for alleged violations of the Clean Air Act (the "CAA"), 42 U.S.C. § 7401 et seq., with respect to emissions of nitrogen oxides ("NO_X"), sulfur dioxide ("SO_2"), and particulate matter ("PM") at five of its glass container manufacturing facilities in Oklahoma, Georgia, Texas, and Pennsylvania.

WHEREAS, the Plaintiffs' Complaint alleges that Owens-Brockway violated and/or continues to violate the Prevention of Significant Deterioration ("PSD") provisions in Part C of Subchapter I of the CAA, 42 U.S.C. §§ 7470-7492, the Non-attainment New Source Review ("Non-attainment NSR") provisions in Part D of Subchapter I of the CAA, 42 U.S.C. §§ 7501-7511f , the permitting requirements of CAA Subchapter V ("Title V"), 42 U.S.C. §§ 7661-7661f, regulations implementing those CAA provisions, and the federally enforceable state implementation plans ("SIPs") developed by Oklahoma, Georgia, Texas, and Pennsylvania;

WHEREAS, the Plaintiffs' Complaint alleges that Owens-Brockway made major modifications to five container glass facilities in Oklahoma, Georgia, Texas, and Pennsylvania (collectively, the "Covered Facilities") without obtaining the required CAA permits and without complying with the CAA's PSD and Non-attainment NSR requirements regarding installing pollution control technology, emission limits, monitoring, recordkeeping, and reporting;

WHEREAS, EPA issued a notice of violation ("NOV") on March 16, 2011, with respect to Owens-Brockway's facility in Atlanta, Georgia (the "Atlanta Facility"), EPA issued an NOV

on April 29, 2009, to Owens-Brockway with respect to its facilities in Muskogee, Oklahoma (the "Muskogee Facility") and Waco, Texas (the "Waco Facility"), and EPA issued an NOV on September 26, 2007, with respect to two of Owens-Brockway's facilities in Pennsylvania (the "Crenshaw Facility" and "Clarion Facility");

WHEREAS, EPA provided Owens-Brockway, Texas, Pennsylvania, Georgia, and ODEQ with actual notice of the alleged violations, in accordance with Sections 113(a)(1) and (b) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and (b);

WHEREAS, Owens-Brockway has denied and continues to deny the violations alleged in the Complaint and NOVs;

WHEREAS, ODEQ is a co-Plaintiff in this matter, and ODEQ is alleging analogous violations of Oklahoma's SIP and/or other state rules and regulations incorporating and implementing the afore-mentioned federal CAA requirements;

WHEREAS, EPA has selected glass manufacturing facilities (including container glass) as a national CAA enforcement priority;

WHEREAS, the United States, ODEQ, and Owens-Brockway anticipate that the installation and operation of pollution control technology and other measures required pursuant to this Consent Decree will achieve significant reductions of emissions from the Covered Facilities, thereby significantly improving air quality;

WHEREAS, Owens-Brockway permanently shut down the Clarion Facility and has permanently surrendered its operating permits for all furnaces and ancillary production equipment at the Clarion Facility;

WHEREAS, Owens-Brockway permanently shut down Furnaces D and E at the Atlanta Facility and has permanently surrendered its operating permits for those furnaces and ancillary production equipment at the Atlanta Facility;

WHEREAS, the objectives of the United States in entering into this Consent Decree are to further the purposes of the CAA as described in CAA Section 101, 42 U.S.C. § 7401, to protect public health, public welfare, and the environment, and to have Owens-Brockway perform the actions described below, and to ensure that Owens-Brockway achieves and maintains compliance with the CAA, applicable state law, and the terms and conditions of applicable CAA permits;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and has jurisdiction over the Parties. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law claims asserted by ODEQ. Venue lies in this District pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Owens-Brockway resides and is located in this judicial district, Owens-Brockway's headquarters and principal place of business are located in this judicial district, and

Owens-Brockway conducts business in this judicial district. For purposes of this Consent Decree or any action to enforce this Consent Decree, Owens-Brockway consents to venue in this judicial district and to this Court's jurisdiction over this Consent Decree, any such action to enforce the Consent Decree, and over Owens-Brockway.

2. For purposes of this Consent Decree, Owens-Brockway agrees that the Complaint states claims upon which relief may be granted pursuant to the Clean Air Act.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, ODEQ, and upon Owens-Brockway and any successors, assigns, or other entities or persons otherwise bound by law.

4. Until this Consent Decree has terminated pursuant to Section XXI below, Owens-Brockway shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or organization retained to perform any of the work required by this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, Owens-Brockway shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree.

5. In any action to enforce this Consent Decree, Owens-Brockway shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree, unless Owens-Brockway establishes that such failure resulted from a Force Majeure event and Owens-Brockway has complied with all the requirements of Section XI of this Consent Decree.

III. DEFINITIONS

6. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated pursuant to the CAA shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Abnormally Low Production Rate" shall mean a glass production rate for a Furnace that is at or below the production rate set forth in Table 6;

b. "Abnormally Low Production Rate Day" shall mean any Operating Day where glass production at a Furnace occurs at or below an Abnormally Low Production Rate for at least one continuous hour;

c. "Atlanta Facility" shall mean Owens-Brockway's glass container manufacturing facility located at 3107 Sylvan Road, Atlanta, Georgia;

d. "Calendar Year" shall mean the period commencing on January 1 and ending on December 31 of the same year;

e. "CEMS" shall mean Continuous Emission Monitoring System;

f. "CEMS Certification" or "CEMS re-Certification" shall mean certification of a CEMS as required by 40 C.F.R. § 60.13, 40 C.F.R. Part 60 Appendix B (Performance Specification 2) and 40 C.F.R. Part 60 Appendix F (Quality Assurance Procedures);

g. "CEMS Certification Event" shall mean any event that triggers the requirement to complete a first CEMS Certification or subsequent CEMS re-Certification.

h. "Clarion Facility" shall mean Owens-Brockway's glass container manufacturing facility located at 151 Grand Avenue, Clarion, Pennsylvania;

i. "Cold Repair" shall refer to the process of stopping glass production, stopping the flow of fuel, fully cooling down a Furnace, replacing some or all of the refractory in the

Furnace, the crown, and/or the regenerators (if applicable), and re-starting the Furnace by firing fuel and starting the production of glass. A Cold Repair, for the purposes of this Consent Decree, does not include any refractory repairs conducted when the Furnace is still hot. A Cold Repair also does not include emergency repairs in which the Furnace is cooled to ambient temperature to conduct the repairs, or repairs to a Furnace that temporarily ceased Operations due to economic reasons, provided the repairs in either instance do not include the replacement of more than 30 percent of the refractories in the Furnace;

j. "Complaint" shall mean the complaint filed by the United States and ODEQ in this action;

k. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXV, below);

l. "Continuous Operating Year" shall mean a Calendar Year during which a Furnace Operates on every Day of that Calendar Year;

m. "Control Device" shall mean an SCR, Dry Scrubber System, or ESP;

n. "Control Device Startup" shall mean the period of time from commencing operation of a Control Device until operation of the device is stable and the device has achieved normal operating conditions; however, this period shall not exceed thirty (30) Days;

o. "Covered Facility" or "Covered Facilities" shall mean one or more of the following glass container manufacturing facilities owned and operated by Owens-Brockway: the Atlanta Facility, the Clarion Facility, the Crenshaw Facility, the Muskogee Facility, and the Waco Facility;

p. "Crenshaw Facility" shall mean Owens-Brockway's glass container manufacturing facility located at Route 219 North, Brockport, Pennsylvania;

q. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time for determining reporting deadlines under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day. The Day starts at 12:00 am and ends at 11:59 pm;

r. "Defendant" shall mean Owens-Brockway;

s. "Dry Scrubber System" shall mean a pollution control system, sometimes referred to as a sorbent injection system, involving the addition of an alkaline material into the gas stream, without the addition of moisture, such that the alkaline material reacts with the acid gases to form solid salts;

t. "Effective Date" shall have the definition provided in Section XVIII;

u. "Electrostatic Precipitator" or "ESP" shall mean a control device that removes PM from a flowing gas (such as air) using the force of an induced electrostatic charge;

v. "Emissions Credit(s)" shall mean an authorization or credit to emit a specified amount of NO_X, SO_2, or PM that is allocated or issued under an emissions trading or marketable permit program of any kind established under the CAA or a state implementation plan ("SIP");

w. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

x. "First Control Device Startup" shall mean the initial startup of a Control Device. First Control Device Startup shall represent the period of time from the Control Device's

commencement of operation until operation of the device is stable and the device has achieved normal operating conditions; however, this period shall not exceed thirty (30) Days;

y. "Furnace" means an emissions unit comprised of a refractory-lined vessel in which raw materials are charged and melted at high temperature to produce molten glass;

z. "Furnace Design Modification" means any technique for reducing NO_X emissions from a Furnace without the use of a Control Device, including, but not limited to, furnace port redesign, burner reconfiguration, cullet preheat, batch preheat, and electric boost;

aa. "Furnace Startup" shall mean the period of time after initial construction, a Cold Repair, a Furnace Malfunction, or Maintenance where a Furnace Shut Down is required to conduct work, and during which the temperature of a Furnace's refractory is increased from ambient temperature to operating temperature. Furnace Startup includes the Initial Heating Phase, the Refractory Soak and Seal Phase, and the Furnace Stabilization Phase;

i. "Initial Heating Phase" means the slow heating of the Furnace refractory using portable natural-gas burners placed in the Furnace ports. This phase typically lasts no longer than five (5) Days and ends when the Furnace burners commence operation;

ii. "Refractory Soak and Seal Phase" means the phase of the Furnace Startup following the Initial Heating Phase when the Furnace is filled with molten glass, the Furnace reaches operating temperature, and the refractory components reach thermal equilibrium. This phase typically lasts no longer than forty (40) Days and ends when the sealing of the joints between the refractory components is completed;

iii. "Furnace Stabilization Phase" means the phase of Furnace Startup following the Refractory Soak and Seal Phase when the Furnace Operation is being stabilized. This phase will end no later than seventy (70) Days after the beginning of the Initial Heating Phase. However, notwithstanding the previous sentence, EPA (or ODEQ with respect to the Muskogee Facility) may seek stipulated penalties if Owens-Brockway has unduly delayed completion of the Furnace Stabilization Phase and emissions from the Furnace during the period of delay exceed the applicable limits in Table 1 or Table 2 below, as measured by a certified CEMS. Owens-Brockway must track the status of the Furnace Startup as required by the log form included in Appendix A. The log form included in Appendix A includes conditions that may be used to indicate whether the Furnace Stabilization Phase should have been completed earlier than 70 days after the beginning of the Initial Heating Phase;

bb. "Furnace Shut Down" shall mean the process of stopping glass production, stopping the flow of fuel, fully cooling down a Furnace;

cc. "Hot Spot Temperature" shall mean the highest temperature of the refractory sidewall between the tuck stone (about 18" above the glass line) and the crown skew (where the Furnace crown meets the Furnace sidewall) (referred to as the Furnace "breastwall refractory");

dd. "Maintenance" shall mean activities necessary to keep the glass manufacturing process, including the Furnace, related process equipment or systems and Control Devices, in normal operating condition, as described in Paragraph 12;

ee. "Malfunction" shall mean, consistent with 40 C.F.R. § 60.2, any sudden, infrequent, and not reasonably preventable failure of a Furnace, air pollution control equipment, process equipment, or a process to operate in a normal or usual manner, but shall not include failures that are caused in part by poor Maintenance or careless operation;

ff. "Month" shall mean a calendar month;

gg. "Muskogee Facility" shall mean Owens-Brockway's glass container manufacturing facility located at the intersection of N. York Street and Old Shawnee Road, Muskogee, Oklahoma;

hh. "New Source Review" or "NSR" shall mean the PSD and Non-attainment NSR provisions in Part C and D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515, applicable federal regulations implementing such provisions of the CAA, and the corresponding provisions of federally enforceable state implementation plans;

ii. "NO_X" shall mean the sum of oxides of nitrogen in the flue gas, collectively expressed as NO_2;

jj. "ODEQ" shall mean the Oklahoma Department of Environmental Quality and any of its successor departments or agencies;

kk. "Operate," "Operation," "Operating," and "Operated" shall mean any time that fuel is fired in a Furnace;

ll. "Operating Day" shall mean any Day during which any fuel is fired into a Furnace;

mm. "Owens-Brockway" shall mean Owens-Brockway Glass Container Inc.;

nn. "Oxygen-Enriched Air Staging" and "OEAS" shall mean the method of combustion air staging to control NO_X formation by reducing the amount of combustion air delivered to the firing ports, thereby decreasing the oxygen available in the flame's high temperature zone in the first combustion stage, and injecting oxygen-enriched air into the Furnace near the exit port(s) to complete combustion in the second stage within the Furnace;

oo. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral;

pp. "Particulate Matter" and "PM" shall mean all particulate matter, other than uncombined water, regardless of particle size, as measured by EPA Method 5 (40 C.F.R. Part 60, Appendix A-3);

qq. "Parties" shall mean the United States, ODEQ, and Owens-Brockway;

rr. "Removal Efficiency" shall mean the percent reduction in mass emission rate of a pollutant achieved by a Furnace's Control Device. This percent reduction shall be calculated by subtracting the mass emission rate measured after a Control Device from the mass emission rate measured just before a Control Device dividing by the mass emission rate measured just before the Control Device, and then multiplying by 100;

ss. "Section" shall mean a portion of this Consent Decree identified by a roman numeral;

tt. "Selective Catalytic Reduction" and "SCR" shall mean a pollution control device that reacts ammonia (NH3) with the NO_X to form nitrogen (N_2) and water (H_2O) using a catalyst to speed the reaction;

uu. "State" shall mean ODEQ;

vv. "Ton" or "tons" shall mean short ton or short tons (equal to 2000 pounds);

ww. "United States" shall mean the United States of America, acting on behalf of EPA;

xx. "Waco Facility" shall mean Owens-Brockway's glass container manufacturing facility located at 5200 Beverly Drive, Waco, Texas;

yy. "24-hour Block Average" shall be calculated by averaging all valid one-hour emissions data outputs (concentration or pounds) for a given Operating Day and using the daily glass production rates (in tons) on that Operating Day where applicable; and

zz. "30-Day Rolling Average Emission Rate" shall be expressed as pounds of pollutant emitted per ton of glass produced calculated at each Furnace in accordance with the following formula and sub-paragraphs (i) and (ii) below:

$$30-day\ average\ \frac{lb\ E}{ton} == \frac{COD_E\ (lbs) + P29D_E(lbs)}{COD_{Prod}\ (tons) + \ P29D_{Prod}(tons)}$$

Where: 30-day average (lb E/ton) = the 30-day Rolling Average Emission Rate

E = Emissions of NO_X or SO_2

COD = Current Operating Day where the relevant 30-day Rolling Average Emission Rate is the applicable limit.

COD_E = The daily emissions as measured by a CEMS on the COD, in pounds.

COD_{Prod} = Daily glass production on the COD, in tons of glass.

P29D = The Previous 29 Operating Days where the relevant 30-day Rolling Average Emission Rate is the applicable limit.

$P29D_E$ = The sum of the daily NO_X or SO_2 emissions as measured by a CEMS during the P29D, in pounds.

$P29D_{Prod}$ = The sum of the daily glass production during the P29D, in tons of glass.

i. A new 30-day Rolling Average Emission Rate shall be calculated for each new Operating Day where the 30-day Rolling Average Emission Rate is the

applicable standard. Any Operating Day where the newly calculated 30-day Rolling Average Emission Rate exceeds the limit is a separate one Day violation; and

ii. As specified in Paragraphs 7-9 of this Consent Decree, certain Abnormally Low Production Rate Days, Furnace and/or Control Device Startup Days, Malfunction Days, and Maintenance Days may be excluded from the 30-day Rolling Average Emission Rate.

IV. COMPLIANCE REQUIREMENTS

7. NO_X Emission Limits, Controls, and Compliance Schedules

a. Interim NO_X Emission Limits.

i. By no later than the compliance deadline specified for each Furnace listed in Table 1, during the Operation of each Furnace, Owens-Brockway shall comply with the applicable interim NO_X emission limit listed in Table 1 in accordance with the method and averaging period requirements specified in sub-paragraphs 7(a)(ii)-(iii). Owens-Brockway shall comply with the interim NO_X emission limits contained in Table 1 until the deadline specified in Table 2 for complying with final NO_X emission limits.

TABLE 1 – Interim NO_X Emissions Limits

Facility and Furnace	Control	Interim NO_X Emission Limit (lbs NO_X/ton glass pulled)	Compliance Deadline
Atlanta Furnace A	OEAS	2.50	February 1, 2013
Atlanta Furnace B	OEAS	3.30	February 1, 2013

Crenshaw Furnace C	None specified	4.30	Effective Date of Consent Decree
Muskogee Furnace A	None specified	5.00	Effective Date of Consent Decree
Muskogee Furnace B	None specified	6.40	Effective Date of Consent Decree

ii. Before NO_X CEMS are installed and certified at each Furnace, as required by Paragraph 10, compliance with the interim NO_X emission limits in Table 1 shall be demonstrated by conducting an EPA Reference Test Method 7E (40 C.F.R. Part 60, Appendix A) source test under representative Operating conditions. At each Furnace, testing shall be conducted initially no later than six (6) months after the Effective Date and once every twelve (12) months thereafter until NO_X CEMS are installed and certified. A source test of a Furnace is not required during the year that a NO_X CEMS is installed, unless otherwise required by applicable law. Owens-Brockway shall be in violation of an Interim NO_X Emissions Limit if the average of the 3 one-hour test runs exceeds the limit for the applicable Furnace listed in Table 1.

iii. As soon as NO_X CEMS are installed and certified at each Furnace as required by Paragraph 10, compliance with the interim NO_X emission limits in Table 1 shall be demonstrated using emissions data generated by the NO_X CEMS and shall be measured as a 30-Day Rolling Average Emission Rate. NO_X CEMS data shall be used to calculate all subsequent daily emission rates that are used to calculate the 30-Day Rolling Average Emission Rate. Owens-Brockway's compliance with the interim NO_X emission limits during Abnormally Low

Production Rate Days; a Furnace Startup; a Malfunction of the Furnace; and Maintenance of the Furnace shall be measured in accordance with Paragraph 7.d.

iv. Atlanta Furnaces. By no later than the applicable compliance deadline specified in Table 1, each Furnace at the Atlanta Facility shall be Operated at all times using Oxygen Enriched Air Staging technology (except up to the first seven (7) days of a Furnace Startup).

b. NO_X Emission Controls and Final NO_X Emission Limits:

By no later than the applicable compliance deadline specified for each Furnace listed in Table 2, during the Operation of each Furnace (except periods outlined in this paragraph), Owens-Brockway shall operate the applicable Control Device or OEAS and comply with the applicable final NO_X emission limit listed in Table 2 in accordance with the method and averaging period requirements specified in sub-paragraphs 7(c)-(d).

TABLE 2 – NO_X Emission Control Installation and Compliance Schedule

Facility and Furnace	Emission Control	Final NO_X Emission Limit (lbs NO_X/ton glass pulled)	Compliance Deadline
Atlanta Furnace A	OEAS and, if needed, Furnace Design Modifications	1.90	The earlier of January 1, 2020, or after the first Cold Repair after the Effective Date
Atlanta Furnace B	OEAS and, if needed, Furnace Design Modifications	2.70	The earlier of January 1, 2020, or after the first Cold Repair after the Effective Date
Crenshaw Furnace C	OEAS and, if needed, Furnace Design Modifications	2.30	The earlier of January 1, 2015, or after the first Cold Repair after the Effective Date
Crenshaw Furnace D	OEAS and, if needed, Furnace Design Modifications	2.80	The earlier of April 1, 2013, or after the first Cold Repair after the Effective Date
Muskogee Furnace A	OEAS and, if needed, Furnace Design Modifications	2.80	The earlier of January 1, 2015, or after the first Cold Repair after the Effective Date
Muskogee Furnace B	OEAS and, if needed, Furnace Design Modifications	3.50	The earlier of January 1, 2016, or after the first Cold Repair after the Effective Date

Waco Furnace A	SCR	1.20	May 1, 2014
Waco Furnace B	SCR	1.20	May 1, 2015
Waco Furnace D	SCR	1.20	June 1, 2013

c. For Furnaces in Table 2 Installing Selective Catalytic Reduction (SCR):

i. By no later than the first Operating Day after the applicable compliance dates specified in Table 2, Owens-Brockway shall Operate each Furnace passing all stack gases through an SCR (except during up to the first ten (10) days of a Furnace Startup; during a Malfunction of the SCR, Dry Scrubber System, or ESP; or during Maintenance of the SCR, Dry Scrubber System, or ESP) in compliance with the following requirements:

1. Each SCR must be designed to achieve a Removal Efficiency of at least 90 percent; and

2. While each SCR is Operating, Owens-Brockway shall continuously Operate the SCR according to all applicable vendor recommendations in order to minimize emissions to the extent practicable taking into consideration ammonia slip.

ii. By no later than the applicable compliance deadline specified in Table 2, Owens-Brockway's compliance with the final NO_X emission limits in Table 2 shall be measured as a 30-Day Rolling Average Emission Rate, as measured using a NO_X CEMS, except during the following periods: Abnormally Low Production Rate Days for a Furnace; Control Device Startup; up to the first ten (10) days of a Furnace Startup; a Malfunction of the SCR, Dry Scrubber System, or ESP; and

Maintenance of the SCR, Dry Scrubber System, or ESP. During Abnormally Low Production Rate Days for a Furnace; SCR Control Device Startup; up to the first ten (10) days of a Furnace Startup; a Malfunction of the SCR, or Dry Scrubber System, or ESP; and Maintenance of the SCR, Dry Scrubber System, or ESP, Owens-Brockway's compliance with the final NO_X emission limits shall be measured as follows:

1. NO_X Limit During Abnormally Low Production Rate Days. When a Furnace(s) ducted through an SCR is Operating at an Abnormally Low Production Rate, Owens-Brockway may exclude the emissions generated during that Operating Day (or Days) from all Furnaces connected to that SCR from the 30-day Rolling Average Emission Rate. During the Day(s) excluded from the 30-Day Rolling Average Emission Rate, a CEMS shall be used to demonstrate Owens-Brockway's compliance with the following pound per day NO_X limit on a 24-hour Block Average:

$$NO_{X\ SCR\ Abn} = 1.2 \frac{lb\ NO_X}{ton} \times \left[\frac{P}{0.35}\right]$$

Where: $NO_{X\ SCR\ Abn}$= NO_X emission limit (in pounds per day) for a Furnace using SCR during Days when an Abnormally Low Production Rate is occurring.

P = Sum of the Furnace-specific production thresholds as defined in Paragraph 14, in tons of glass produced per Day for all of the Furnaces ducted through the SCR.

2. NO_X Limit During First Ten (10) Days of Furnace Startup. For no more than the first ten (10) Days of a Furnace Startup, that Furnace's exhaust may bypass the SCR to avoid having the operating inlet temperature of the SCR fall below its operational range. During the Days

that Furnace exhaust bypasses the SCR, Owens-Brockway shall burn no more than 15 million standard cubic feet of natural gas in that Furnace.

3. NO_X Limit During SCR Control Device Startup or Malfunction of the SCR, Dry Scrubber System, or ESP. For any Operating Day during a SCR Control Device Startup or where a Malfunction of the SCR, Dry Scrubber System, or ESP occurs, Owens-Brockway may exclude the emissions generated during that Operating Day from all Furnaces connected to the SCR from the 30-day Rolling Average Emission Rate. During the Day(s) excluded from the 30-day Rolling Average Emission Rate, a CEMS shall be used to demonstrate Owens-Brockway's compliance with the following pound per day NO_X limit on a 24-hour Block Average:

$$NO_{X\ SCR\ \ Malf,SCR\ Startup} = 5\ \times NO_{X\ SCR\ Abn}$$

Where: $NO_{X\ SCR\ Malf,\ SCR\ Startup}$ = NO_X emission limit (in pounds per day) for a Furnace using SCR during Days when a Control Device Malfunction or SCR Control Device Startup is occurring.

$NO_{X\ SCR\ Abn}$ = As defined in Paragraph 7(c)(ii)(1), NO_X emission limit (in pounds per day) for a Furnace using SCR during Days when an Abnormally Low Production Rate is occurring.

4. NO_X Limit During Maintenance of the SCR, Dry Scrubber System, or ESP. For any Operating Day during which Maintenance activities on the SCR, Dry Scrubber System, or ESP are performed, Owens-Brockway may exclude the emissions generated during that Maintenance Day from all Furnaces connected to the SCR from the 30-day Rolling Average Emission Rate. During the Day(s) excluded from the 30-day Rolling Average Emission Rate, a CEMS shall be used to demonstrate Owens-

Brockway's compliance with the following pound per day NO_X limit on a 24-hour Block Average:

$$NO_{X\ SCR\ \ Maint} = \frac{MH \times [5\ \times NO_{X\ SCR\ Abn}]}{24} + \frac{NH \times [NO_{X\ SCR\ Abn}]}{24}$$

Where: $NO_{X\ SCR\ Maint}$ = NO_X emission limit (in pounds per day) for a Furnace using SCR during a Maintenance Day.

$NO_{X\ SCR\ Abn}$ = As defined in Paragraph 7(c)(ii)(1), NO_X emission limit (in pounds per day) for a Furnace using SCR during an Abnormally Low Production Rate Day.

MH = Hours of Maintenance

NH = Normal Hours = 24 – MH

d. For Interim NO_X Limits in Table 1 and Furnaces in Table 2 Installing OEAS and Furnace Design Modifications:

i. By no later than the first Operating Day after the applicable date specified in either Table 1 or Table 2, Owens-Brockway shall Operate each Furnace (except during up to the first seven (7) days of a Furnace Startup) using OEAS technology in compliance with the following requirements:

ii. Owens-Brockway's compliance with the final NO_X emission limits shall be measured as a 30-Day Rolling Average Emission Rate, as measured using a NO_X CEMS, except during the following periods: Abnormally Low Production Rate Days; a Furnace Startup; a Malfunction of the Furnace; and Maintenance of the Furnace. During Abnormally Low Production Rate Days; a Furnace Startup; a Malfunction of the Furnace; and Maintenance of the Furnace, Owens-Brockway's compliance with the interim NO_X emission limits specified in Table 1 and the final NO_X emissions limit for Furnaces in Table 2 installing OEAS and Furnace Design Modifications shall be measured as follows:

1. NO_X Limit During Abnormally Low Production Rate Days. When a Furnace(s) is Operating at an Abnormally Low Production Rate, Owens-Brockway may exclude the emissions generated during that Operating Day (or Days) from that Furnace from the 30-day Rolling Average Emission Rate. During the Day(s) excluded from the 30-day Rolling Average Emission Rate, a CEMS shall be used to demonstrate that Furnace's compliance with the following pound per day NO_X limit on a 24-hour Block Average:

$$NO_{X\ OEAS\ Abn} = E\frac{lb\ NO_X}{ton} \times \left[\frac{P}{0.35}\right]$$

Where: $NO_{X\ OEAS\ Abn}$= NO_X emission limit (in pounds per day) for an OEAS-Equipped Furnace during an Abnormally Low Production Rate Day.

E = Furnace-specific Emission Limit from Table 1 or Table 2, as applicable.

P = Furnace-specific production threshold as defined in Paragraph 14, in tons of glass produced per Day.

2. NO_X Limits During Furnace Startup.

a. Initial Heating Phase Operational Limit. During the Initial Heating Phase of a Furnace Startup, Owens-Brockway shall burn no more than 8 million standard cubic feet of natural gas in that Furnace.

b. Refractory Soak and Seal Phase Operational Limits. During the Refractory Soak and Seal Phase of a Furnace Startup, Owens-Brockway shall comply with the following requirements to limit NO_X emissions:

i. Owens-Brockway shall burn no more than 80 million standard cubic feet natural gas in that Furnace;

ii. Owens-Brockway shall limit excess oxygen to below 5 percent, as measured and recorded by the oxygen sensor located in the crown of each furnace regenerator at least once per shift;

iii. Owens-Brockway shall limit Hot Spot Temperature to 2900 degrees Fahrenheit; and

iv. Owens-Brockway shall use thermal blankets or similar techniques to minimize air infiltration until all Furnace expansion joints are sufficiently closed.

c. Furnace Stabilization Phase Operational Limits. During the Furnace Stabilization Phase of a Furnace Startup, Owens-Brockway shall comply with the following requirements to limit NO_X emissions:

i. Owens-Brockway shall burn no more than fifty (50) million standard cubic feet natural gas in that Furnace;

ii. Owens-Brockway shall limit excess oxygen to below 5 percent as measured and recorded by the oxygen sensor located in the crown of each furnace regenerator at least once per shift; and

iii. Owens-Brockway shall limit Hot Spot Temperature to 2900 degrees Fahrenheit.

3. NO_X Limit During Furnace Malfunction. For any Operating Day during which a Malfunction of a Furnace occurs, Owens-Brockway may exclude the emissions generated during that Operating Day (or Days) from that Furnace from the applicable 30-day Rolling Average Emission Rate. During the Day(s) excluded from the 30-day Rolling Average Emission Rate, a CEMS shall be used to demonstrate Owens-Brockway's compliance with the following pound per day NO_X limit on a 24-hour Block Average:

$$NO_{X\ OEAS\ Malf} = 3 \times NO_{X\ OEAS\ Abn}$$

Where: $NO_{X\ OEAS\ Malf}$ = NO_X emission limit (in pounds per day) for an OEAS-Equipped Furnace during a Malfunction Day.

$NO_{X\ OEAS\ Abn}$ = As defined under Paragraph 7(d)(ii)(1), NO_X emission limit (in pounds per day) for an OEAS-Equipped Furnace during an Abnormally Low Production Rate Day.

4. NO_X Limit During Maintenance. For any Operating Day when Maintenance of a Furnace is performed, Owens-Brockway may exclude the emissions generated during that Operating Day (or Days) from that Furnace from the 30-day Rolling Average Emission Rate. During the Day(s) excluded from the 30-day Rolling Average Emission Rate, a CEMS shall be used to demonstrate that Furnace's compliance with the following pound per day NO_X limit on a 24-hour Block Average:

$$NO_{X\ OEAS\ Maint} = \frac{MH \times [3 \times NO_{X\ OEAS\ Abn}]}{24} + \frac{NH \times [NO_{X\ OEAS\ Abn}]}{24}$$

Where: $NO_{X\ OEAS\ Maint}$ = NO_X emission limit (in pounds per day) for an OEAS-Equipped Furnace during a Maintenance Day.

$NO_{X\ OEAS\ Abn}$ = As defined in Paragraph 7(d)(ii)(1), NO_X emission limit (in pounds per day) for an OEAS-Equipped Furnace during an Abnormally Low Production Rate Day.

MH = Hours of Maintenance

NH = Normal Hours = 24 – MH

8. SO_2 Emission Limits, Controls, and Compliance Schedules.

a. SO_2 Emission Controls and Final Emissions Limit for Furnaces at Waco Facility.

By no later than the applicable compliance deadline specified for each Furnace listed in Table 3, during the Operation of each Furnace (except periods outlined in this paragraph), Owens-Brockway shall Operate a Dry Scrubber System and comply with the applicable final SO_2 emission limit listed in Table 3 in accordance with the method and averaging period requirements specified in sub-paragraphs 8(b) through (c).

TABLE 3 – SO_2 Emission Controls Installation and Compliance Schedule

Facility and Furnace	Controls	Final SO_2 Emission Limit (lbs SO_2/ton glass pulled)	Compliance Deadline
Waco Furnace A	Dry Scrubber System	0.80	May 1, 2014
Waco Furnace B	Dry Scrubber System	0.80	May 1, 2015
Waco Furnace D	Dry Scrubber System	0.80	June 1, 2013

b. By no later than the first Operating Day after the dates specified in Table 3, Owens-Brockway shall Operate each Furnace passing all stack gases through a Dry Scrubber System (except during up to the first ten (10) days of a Furnace Startup; during

a Malfunction of the ESP, or during Maintenance of the ESP) in compliance with the following requirements:

i. By no later than the compliance deadlines specified in Table 3, Owens-Brockway's compliance with the final SO_2 emission limits shall be measured as a 30-Day Rolling Average Emission Rate, as measured using a SO_2 CEMS, except during the following periods: a Control Device Startup; up to the first ten (10) days of a Furnace Startup; a Malfunction of the Dry Scrubber System or ESP; and Maintenance of the Dry Scrubber System or ESP.

c. During a Control Device Startup; up to the first ten (10) days of a Furnace Startup; a Malfunction of the Dry Scrubber System or ESP; and Maintenance of the Dry Scrubber System or ESP, Owens-Brockway's compliance with the final SO_2 emission limits shall be measured as follows:

i. SO_2 Limit During Control Device Startup or up to the First Ten (10) Days of Furnace Startup. Owens-Brockway shall comply with the following operational requirements to limit SO_2 emissions during all phases of a Control Device Startup or up to the first ten (10) days of a Furnace Startup:

1. Owens-Brockway shall limit the amount of sulfur added to the batch materials for that Furnace to no more than 3.2 pounds per ton of total batch material (including cullet).

2. For no more than the first ten (10) Days of a Furnace Startup, that Furnace's exhaust may bypass the Dry Scrubber System to avoid having the operating inlet temperature of the Dry Scrubber System fall below its

operational range. During the Days that Furnace exhaust bypasses the Dry Scrubber System, Owens-Brockway shall burn no more than 15 million standard cubic feet of natural gas in that Furnace.

ii. SO_2 Limit During Malfunction of the Dry Scrubber System or ESP. For any Operating Day during which a Malfunction of the Dry Scrubber System or ESP occurs, Owens-Brockway may exclude the emissions generated during that Operating Day (or Days) from all Furnaces connected to that Dry Scrubber System or ESP from the 30-day Rolling Average Emission Rate. During the Day(s) excluded from the 30-day Rolling Average Emission Rate, a CEMS shall be used to demonstrate Owens-Brockway's compliance with the following pound per day SO_2 limit on a 24-hour Block Average:

$$SO_{2\ Scrub\ Malf} = 3.2 \frac{lb\ SO_2}{ton} \times \left[\frac{P}{0.35}\right]$$

Where: $SO_{2\ Scrub\ Malf}$ = SO_2 emission limit (in pounds per day) for a Furnace with a Dry Scrubber System during a Malfunction Day.

P = Furnace-specific production threshold as defined in Paragraph 14, in tons of glass produced per Day.

iii. SO_2 Limit During Maintenance of the Dry Scrubber System or ESP. For any Operating Day when Maintenance is performed on the Dry Scrubber System or ESP, Owens-Brockway may exclude the emissions generated during that Operating Day (or Days) from that Furnace from the 30-day Rolling Average emission rate. During the Day(s) excluded from the 30-day Rolling Average emission rate, a CEMS shall be used to demonstrate Owens-Brockway's

compliance with the following pound per day SO_2 limit on a 24-hour Block Average:

$$SO_{2\ Scrub\ \ Maint} = \frac{MH \times [3.2 \frac{lb\ SO_2}{ton} \times \left[\frac{P}{0.35}\right]]}{24} + \frac{NH \times [0.8 \frac{lb\ SO_2}{ton} \times \left[\frac{P}{0.35}\right]]}{24}$$

Where: $SO_{2\ \text{Scrub Maint}}$ = SO_2 emission limit (in pounds per day) for a Furnace with a Dry Scrubber System during a Maintenance Day.

P = Furnace-specific production threshold as defined in Paragraph 14, in tons of glass produced per Day.

MH = Hours of Maintenance

NH = Normal Hours = 24 – MH

9. PM Emission Limits, Controls, and Compliance Schedules.

a. PM Emission Controls and Final Emissions Limit for Furnaces at Waco Facility:

By no later than the applicable compliance deadline specified for each Furnace listed in Table 4, during the Operation of each Furnace (except periods outlined in this paragraph), Owens-Brockway shall Operate an ESP and comply with the applicable final PM emission limit listed for each Furnace in Table 4 in accordance with the method and averaging period requirements specified in sub-paragraph 9(b). Until the compliance deadline specified for each Furnace in Table 4, Owens-Brockway shall comply with all applicable permit limits for PM emissions in effect for each Furnace as of the Effective Date of this Consent Decree.

TABLE 4 – PM Emission Controls Installation and Compliance Schedule

Facility and Furnace	Controls	Final PM Emission Limits (lbs PM/ton glass pulled)	Compliance Deadline
Waco Furnace A	ESP	Filterable PM: 0.20	May 1, 2014
Waco	ESP	Filterable PM: 0.20	May 1, 2015

Furnace B			
Waco Furnace D	ESP	Filterable PM: 0.20	June 1, 2013

b. By no later than the first Operating Day after the applicable dates specified in Table 4, Owens-Brockway shall Operate each Furnace passing all stack gases through an ESP (except during up to the first ten (10) days of a Furnace Startup; during a Malfunction of the ESP, or during Maintenance of the ESP) in compliance with the following requirements:

i. Compliance with the PM emission limits shall be demonstrated through annual stack tests and using EPA Reference Method 5 (40 C.F.R. Part 60, Appendix A-3). Owens-Brockway shall conduct an initial stack test on each Furnace at the Waco Facility by no later than six (6) months after the applicable compliance date listed in Table 4 and once each Calendar Year thereafter.

10. CEMS - Installation, Calibration, Certification, Maintenance, and Operation.

a. For each Furnace listed in Table 5, Owens-Brockway shall install, calibrate, certify, maintain, and Operate NO_X CEMS and SO_2 CEMS by no later than the applicable deadlines specified in Table 5 in accordance with the requirements specified in subparagraphs 10(b)- (d).

TABLE 5 – CEMS Compliance Deadlines

Facility and Furnace	NO_X CEMS Deadline	SO_2 CEMS Deadline
Atlanta Furnace A	February 1, 2013	February 1, 2013
Atlanta Furnace B	February 1, 2013	February 1, 2013
Crenshaw Furnace C	January 1, 2013	January 1, 2013
Crenshaw Furnace D	April 1, 2013	April 1, 2013

Muskogee Furnace A	January 1, 2013	January 1, 2013
Muskogee Furnace B	January 1, 2013	January 1, 2013
Waco Furnace A	May 1, 2014	May 1, 2014
Waco Furnace B	May 1, 2015	May 1, 2015
Waco Furnace D	June 1, 2013	June 1, 2013

b. Owens-Brockway shall install, calibrate, certify, maintain, and operate all NO_X and SO_2 CEMS in accordance with the requirements specified in sub-paragraphs 10(b)-(d) as follows:

i. NO_X and SO_2 CEMS shall continuously monitor and record the hourly NO_X and SO_2 emission concentrations (in parts per million -- ppm) during each Operating Day at each Furnace (or Furnaces where more than one Furnace subject to the same emission limit is routed through a common exhaust stack); and

ii. NO_X and SO_2 CEMS shall be installed, calibrated, certified, maintained, and operated in accordance with 40 C.F.R. § 60.13, 40 C.F.R. Part 60, Appendix B (Performance Specification 2), and 40 C.F.R. Part 60, Appendix F (Quality Assurance Procedures).

iii. Events that will trigger subsequent CEMS Certification (or re-Certification) include any Furnace Startup or First Control Device Startup. Owens-Brockway shall perform CEMS Certification or re-Certification by no later than thirty (30) Days after the Furnace Startup period concludes (but by no later than seventy (70) Days after Furnace Startup commences) or a First Control Device Startup period concludes. If a Furnace Startup and a First Control Device Startup happen at the same time, then the re-Certification shall not be conducted

until the first Operating Day after the later startup event concludes (but by no later than seventy (70) Days after Furnace Startup commences).

c. Where the Consent Decree requires the use of CEMS to determine compliance with an emission rate (i.e., pounds per ton or tons per year), Owens-Brockway shall either:

i. Comply with the requirements set forth above in Paragraph 10.b. for the CEMS and use an EPA-approved method for calculating flow. Where an emission limit is expressed in pounds of pollutant per ton of glass produced/pulled, the data acquisition and handling system for the CEMS shall convert the ppm values into pounds per hour values in conjunction with the EPA-approved flow method calculation. At the end of each Operating Day, the data acquisition and handling system shall divide the total daily emissions in pounds per day for valid CEMS hourly data by the total tons of glass produced/pulled during the Operating Day (reduced proportionally based on the valid CEMS data hours) to describe the pound per ton emission rate for the Operating Day. The resulting number shall be recorded in units of pounds of pollutant per ton of glass produced/pulled for the applicable Operating Day; or

ii. Install, calibrate, certify, maintain, and operate NO_X and SO_2 Continuous Emission Rate Monitoring System (CERMS) as follows:

1. The CERMS shall be installed, calibrated, certified, maintained, and operated in accordance with 40 C.F.R. § 60.13, 40 C.F.R. Part 60, Appendix B (Performance Specification 6), and 40 C.F.R. Part 60, Appendix F (Quality Assurance Procedures);

2. Owens-Brockway must comply with all monitoring, recordkeeping, and reporting requirements in 40 C.F.R. § 60.13 and 40 C.F.R. Part 60, Appendix B (Performance Specification 6); and

3. Where an emission limit is expressed in pounds of pollutant per ton of glass produced/pulled, the data acquisition and handling system for the CEMS shall convert the ppm values into pound per hour values in conjunction with the CERMS. At the end of each Operating Day, the data acquisition and handling system shall divide the total daily emissions in pounds per day for valid CEMS hourly data by the total tons of glass produced/pulled during the Operating Day (reduced proportionally based on the valid CEMS data hours) to describe the pound per ton emission rate for the Operating Day. The resulting number shall be recorded in units of pounds of pollutant per ton of glass produced/pulled for the applicable Day.

d. CEMS Certification and CEMS Certification Events. Owens-Brockway shall not perform CEMS Certification or CEMS re-Certifications during Abnormally Low Production Rate Days, the Initial Heating Phase and Refractory Soak and Seal Phase of Furnace Startup, a Control Device Startup, a Malfunction, or Maintenance. By no later than the first Operating Day after any CEMS Certification Event concludes at a Furnace, a new CEMS Certification or CEMS re-Certification shall be performed for that Furnace. If a CEMS Certification Event occurs at any Furnace, the requirement to demonstrate compliance continuously with the applicable final NO_X or SO_2 emission limit for that Furnace will be suspended until CEMS Certification or CEMS re-Certification is

complete (provided that the seven-day test required for CEMS Certification is commenced on the first Operating Day following the conclusion of the CEMS Certification Event).

11. Good Air Pollution Control Practice. At all times, including during Abnormally Low Production Rate Days, a Furnace Startup, a Control Device Startup, a Malfunction, and Maintenance, Owens-Brockway shall maintain and operate all Furnaces, all Control Devices, and any other associated air pollution control equipment in accordance with 40 C.F.R. § 60.11(d).

12. Maintenance. For Furnaces and Control Devices at the Covered Facilities:

a. Furnace Maintenance. Any Operating hour that is exempted from the applicable 30-Day Rolling Average Emission Rate because of Maintenance being performed on a Furnace, is subject to the following restrictions and must comply with the following requirements: Scheduled or Furnace preventive Maintenance, including checker raking and burning, shall not exceed ninety-six (96) Operating hours per Calendar Year and shall be conducted only when any downstream Control Devices required by this Consent Decree are operating.

b. Scheduled or Preventive Maintenance on Control Devices. Any Operating hour that is exempted from the applicable 30-Day Rolling Average Emission Rate because of Maintenance being performed on a Control Device, is subject to the following restrictions and must comply with the following requirements: Scheduled or preventive Maintenance of Control Devices shall occur and shall be completed while the Furnace(s) connected to the Control Device(s) is not operating, unless the Furnace connected to the Control Device is scheduled to have a Continuous Operating Year. During a Continuous Operating Year, scheduled or preventive Maintenance on the Control Devices may be

conducted while the Furnace(s) connected to the Control Device(s) is Operating; however, Maintenance lasting greater than twenty-four (24) consecutive hours shall occur only during Abnormally Low Production Rate Days. All Control Device Maintenance occurring during a Continuous Operating Year must also be performed in accordance with the following requirements:

i. Bypassing a SCR for the purpose of preventive Maintenance shall not exceed 144 hours per Calendar Year. Bypass of the SCR required as a result of bypassing the ESP or Dry Scrubber System shall count towards the 144 hour limit.

ii. Bypassing an ESP for the purpose of preventive Maintenance shall not exceed 144 hours per Calendar Year. Furthermore, if an ESP is bypassed, the associated Dry Scrubber System and SCR must be bypassed as well.

iii. Bypassing a Dry Scrubber System for the purpose of preventive Maintenance shall not exceed 144 hours per Calendar Year. Bypass of the Dry Scrubber System required as a result of bypassing the ESP shall count towards the 144 hour limit.

13. Source/Stack Testing. All source/stack tests required by the Consent Decree shall be conducted in accordance with the requirements of the specified Reference Test Method and shall be performed under representative Operating conditions for the Furnace being tested. Each test shall be comprised of at least three (3) valid one-hour stack test runs. Owens-Brockway shall discard any invalid test runs, such as those that are compromised because of sample contamination. If a test run is discarded, Owens-Brockway shall replace it with an additional valid test run. Owens-Brockway shall report the results of the discarded test runs to EPA and

shall provide all information necessary to document why the test run was not valid. Source/stack testing shall not be conducted during Abnormally Low Production Rate Days, a Furnace Startup, a Control Device Startup, a Malfunction of the Furnace or relevant Control Device, or Maintenance of the Furnace or relevant Control Device.

14. Abnormally Low Production Rate Days.

a. Table 6 lists the threshold values for an Abnormally Low Production Rate Day for each Furnace at a Covered Facility.

TABLE 6 – Abnormally Low Production Rate Day Thresholds

Facility and Furnace	Abnormally Low Production Rate Day Threshold (tons/day)
Atlanta Furnace A	130 TPD
Atlanta Furnace B	162 TPD
Crenshaw Furnace C	114TPD
Crenshaw Furnace D	155 TPD
Muskogee Furnace A	91 TPD
Muskogee Furnace B	131 TPD
Waco Furnace A	128 TPD
Waco Furnace B	109 TPD
Waco Furnace D	140 TPD

b. If increased production capacity at a Furnace is authorized by a revised permit limit, the Abnormally Low Production Rate Day Threshold will be 35 percent of the new permitted production (or design production, where there is no permitted production) as determined on a daily basis.

15. Recordkeeping.

a. For any Operating Day(s) that Owens-Brockway excludes from the relevant 30-day Rolling Average Emission Rate, it shall record: 1) the date; 2) the relevant exception pursuant to which Owens-Brockway is excluding the emissions generated during that Operating Day (or Days) (i.e. Abnormally Low Production Rate Day, Furnace Startup,

Control Device Startup, Malfunction, or Maintenance, or Furnace Maintenance); 3) a calculation of the applicable emission limit (in pounds of NO_X and/or SO_2 per day) according to the equations listed above in Paragraphs 7 and 8; and 4) the emissions recorded by the CEMS (in pounds of NO_X and/or SO_2 per day). For any Operating Day(s) excluded for Maintenance of a Control Device or Furnace, Owens-Brockway shall also record the total number of hours during which Maintenance occurred.

b. Recordkeeping During Furnace Startup. In addition to the recordkeeping requirements listed above, Owens-Brockway must also keep the following records during Furnace Startup:

i. For All Furnace Startup Phases. The amount of sulfur added to the batch materials in pounds per ton of total batch material (including cullet);

ii. For the Initial Heating Phase. The total natural gas usage in that Furnace (in million standard cubic feet);

iii. For the Refractory Soak and Seal Phase.

1. The total natural gas usage in that Furnace (in million standard cubic feet);

2. The excess oxygen percentage (as measured and recorded by the oxygen sensor in the crown of each furnace regenerator at least once per shift);

3. Any Hot Spot Temperature (measured at least once per shift); and

4. A certified statement asserting whether thermal blankets or similar techniques were used during this period.

iv. For the Furnace Stabilization Phase.

1. The total natural gas usage in that Furnace (in million standard cubic feet);

2. The excess oxygen percentage (as measured and recorded by the oxygen sensor in the crown of each furnace regenerator at least once per shift); and

3. The average Hot Spot Temperature (measured at least once per shift).

V. CIVIL PENALTY

16. Within 30 Days after the Effective Date of this Consent Decree, Owens-Brockway shall pay the following amounts as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court at the rate specified in 28 U.S.C. § 1961 as of the date of lodging:

a. $1,208,000 to the United States, and

b. $242,000 to ODEQ.

17. Owens-Brockway shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Owens-Brockway, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Ohio, Four Seagate, Third Floor, Toledo, Ohio 43604, (419) 259-6376. At the time of payment, Owens-Brockway shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter to the United States in accordance with Section XVI of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

This transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States, et al. v. Owens-Brockway Glass Container Inc. (N.D. Ohio), and shall reference the civil action number and DOJ case number 90-5-2-1-09678.

18. Owens-Brockway shall pay the civil penalty due to ODEQ paid by check or money order made payable to the Oklahoma Department of Environmental Quality Penalty Fund and delivered to:

Accounts Receivable
Financial and Human Resources Management
Department of Environmental Quality
P.O. Box 2036
Oklahoma City, OK 73101-2036

19. Owens-Brockway shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal or Oklahoma state income tax.

VI. ENVIRONMENTAL MITIGATION PROJECT

20. Within thirty (30) Days of the Effective Date of this Consent Decree, Owens-Brockway shall implement the Environmental Mitigation Project ("Project") described in Appendix B of this Consent Decree.

21. Owens-Brockway shall certify, within thirty (30) Days of completing the Project requirements described in Appendix B, that Owens-Brockway is not otherwise required by law to perform the Project, that Owens-Brockway is unaware of any other person who is required by law to perform the Project, and that Owens-Brockway will not use any of the Project, or portion thereof, to satisfy any obligations that it may have under other applicable requirements of law.

22. In connection with any communication to the public or to shareholders regarding Owens-Brockway's actions or expenditures relating in any way to the Environmental Mitigation Project in this Consent Decree, Owens-Brockway shall include prominently in the communication the information that the actions and expenditures were required as part of a negotiated consent decree to resolve the United States' claims that Owens-Brockway violated the Clean Air Act.

VII. PERMITS

23. Where any compliance obligation under this Consent Decree requires Owens-Brockway to obtain a federal, state, or local permit, Owens-Brockway shall submit timely and complete applications and take all other actions necessary to obtain all such permits. Owens-Brockway may seek relief under the provisions of Section XI of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit required to fulfill such obligation, if Owens-Brockway has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits. If Owens-Brockway fails to submit a timely permit application, Owens-Brockway shall be barred from asserting a claim under Section XI (Force Majeure) of the Consent Decree that is based on delays in receiving necessary permits.

24. For each Furnace at a Covered Facility, by no later than six months before any applicable deadline specified in Section IV (Compliance Requirements), Owens-Brockway shall submit timely and complete applications to the appropriate state air permitting authority, and take all other actions necessary, to obtain any pre-construction, construction, and operating permits required to install and operate Control Devices, OEAS and Furnace Design Modifications, and CEMS required under Section IV (Compliance Requirements), as well as to increase production at any of the Furnaces at a Covered Facility, if applicable.

25. If not included as part of the permit applications described above, by no later than one year after each compliance deadline for the final emission limits specified in Section IV, Owens-Brockway shall also apply for either: 1) a federally enforceable permit issued either by EPA or pursuant to the applicable SIP, or 2) an amendment to the applicable SIP. The federally enforceable permit or SIP Amendment shall incorporate and require Owens-Brockway's compliance with the following requirements specified in Section IV (Compliance Requirements) of the Consent Decree:

a. Any applicable final emission limits, as well as the specified method of measuring and calculating emissions and averaging periods;

b. Requirements to install, calibrate, certify, maintain, and operate NO_X and SO_2 CEMS or CERMS pursuant to Paragraph 10;

c. Requirements to Operate in accordance with 40 C.F.R. § 60.11(d) pursuant to Paragraph 11;

d. Requirements for annual PM stack tests pursuant to Paragraph 13; and

e. Any reporting and recordkeeping requirements associated with the Furnaces and Control Devices pursuant to Paragraph 15.

26. This Consent Decree shall not terminate until the requirements set forth in Paragraph 25 are incorporated into a federally enforceable permit or SIP Amendment for each Covered Facility.

VIII. EMISSION CREDIT GENERATION

27. Owens-Brockway may not use, purchase, or otherwise obtain Emission Credits in order to comply with the requirements of the Consent Decree. For any and all actions taken by Owens-Brockway to comply with the requirements of this Consent Decree, any emission

reductions shall not be considered a creditable contemporaneous emission decrease for the purpose of obtaining netting reductions and offsets under the Clean Air Act's PSD and Nonattainment NSR programs respectively. This includes any decreases for the closure of the Clarion Facility and the shutdown of the Atlanta Furnaces D and E. However, nothing in the Consent Decree shall preclude Owens-Brockway from using, selling or transferring Emissions Credits that may be generated as a result of:

a. Activities that reduce emissions from the Covered Facilities before the Effective Date, except for activities undertaken before the Effective Date to comply with any requirement of Section IV (Compliance Requirements) of the Consent Decree. Also, Owens-Brockway may not use, sell, or transfer credits from the shut down of the Clarion Facility or, after March 16, 2011, Atlanta Furnaces D and E.

b. Achievement and maintenance of emission rates (including through permanent closure of a Furnace) at the Covered Facilities below the emission limits required by Section IV (Compliance Requirements) so long as Owens-Brockway timely reports the generation of such surplus Emissions Credits in accordance with Section IX (Reporting Requirements) of the Consent Decree. For purposes of this Paragraph, surplus NO_X, SO_2 and/or PM Emissions Credits are limited to the tons of NO_X, SO_2, and/or PM that Owens-Brockway removed from its emissions that are in excess of the emissions reductions required by Section IV (Compliance Requirements) of the Consent Decree;

c. Nothing in this Consent Decree is intended to prohibit Owens-Brockway from seeking to utilize emission reductions from the installation of Control Devices required by this Consent Decree at the Waco Facility in determining whether a project on the same Furnace that includes both the installation of Control Devices under this Consent Decree

and other simultaneous construction that is permitted at the same time (either a single permit or multiple permits), triggers New Source Review.

28. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by U.S. EPA or a state as creditable contemporaneous emission decreases for the purposes of attainment demonstrations submitted pursuant to § 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on NAAQS, PSD increments, or air quality-related values, including visibility in a Class I area.

IX. REPORTING REQUIREMENTS

29. Owens-Brockway shall submit the following reports:

a. Until termination of this Consent Decree pursuant to Section XXI, Owens-Brockway shall submit to EPA and ODEQ a written, annual progress report by no later than March 1 of each Calendar Year.

b. Each annual report shall include the following information for the preceding Calendar Year: 1) the status of Owens-Brockway's progress toward implementing Section IV (Compliance Requirements); 2) a description of any Section IV Compliance Requirements completed; 3) any problems encountered or anticipated in implementing Section IV (Compliance Requirements), together with implemented or proposed solutions; 4) a summary of all permitting activity pertaining to compliance with the Consent Decree and the status of any necessary permit applications; 5) for each Furnace for which the CEMS installation and calibration is completed, a tabulation of that Furnace's 30-Day Rolling Average Emission Rates for NO_X and SO_2; 6) the actual monthly emissions of NO_X and SO_2, from each Furnace at the Covered Facilities measured using CEMS, and for PM emissions at the Covered Facilities as estimated

based on the most recent source/stack test(s); 7) the results of any source/stack testing performed at any Furnace at a Covered Facility; 8) any other information required to be recorded or reported pursuant to Section VIII.

c. Each annual report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Owens-Brockway violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Owens-Brockway shall notify the United States and ODEQ (with respect to the Muskogee Facility only), of such violation and its likely duration, in writing and by telephone, fax, or email, within ten (10) Days of the Day Owens-Brockway first becomes aware of the violation or potential violation. This notice shall provide an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Owens-Brockway shall explain this in the report. Owens-Brockway shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Owens-Brockway first becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Owens-Brockway of its obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

30. Whenever any violation of this Consent Decree or any other event affecting Owens-Brockway's performance under this Consent Decree, or affecting the performance of a Furnace or Covered Facility, may pose an immediate threat to the public health or welfare or the

environment, Owens-Brockway shall notify EPA and ODEQ orally or by electronic or facsimile transmission as soon as possible, but in no case no later than 24 hours after Owens-Brockway first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

31. All reports shall be submitted to the persons designated in Section XVI of this Consent Decree (Notices).

32. Each report submitted by Owens-Brockway under this Section shall be signed by an official of the submitting party and shall include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

33. The reporting requirements of this Consent Decree do not relieve Owens-Brockway of any reporting obligations required by the Clean Air Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

34. Any information provided pursuant to this Consent Decree may be used by the United States or ODEQ in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

X. STIPULATED PENALTIES

35. Owens-Brockway shall be liable for stipulated penalties to the United States and ODEQ for violations of the Consent Decree as specified below, unless excused under Section XI (Force

Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

36. Late Payment of Civil Penalty. If Owens-Brockway fails to pay the civil penalty required to be paid under Section V of this Decree (Civil Penalty) when due, Owens-Brockway shall pay a stipulated penalty of $5,000 per Day for each Day that the payment is late, plus interest accruing from the date the payment was due, at the rate specified in 28 U.S.C. § 1961 as of the due date.

37. Compliance Milestones

a. Emission Limits. The following stipulated penalties shall accrue per violation for each violation of any NO_X, SO_2, and/or PM interim or final emission limit specified in Section IV of this Consent Decree:

i. Where the violation exceeds the applicable emission limit by less than or equal to 10 percent:

Penalty Per Violation Per Day	Period of Noncompliance
$1000	1st through 30th Day
$2,500	31st Day and beyond

ii. Where the violation exceeds the applicable emission limit by more than 10 percent:

Penalty Per Violation Per Day	Period of Noncompliance
$2,000	1st through 14th Day
$3,000	15th through 30th Day
$5,000	31st Day and beyond

iii. Emission limit violations during stack/source testing: For each stack/source test required by Section IV where the applicable interim or final emission limit for NO_X, SO_2 and/or PM is exceeded, a stipulated penalty of $15,000 shall accrue per stack/source test.

b. Compliance Deadlines for Installing Control Devices and OEAS. The following stipulated penalties shall accrue per violation per Day for each violation of any compliance deadline specified in Section IV of the Consent Decree regarding the installation and operation of Control Devices, including OEAS:

Penalty Per Violation Per Day	Period of Noncompliance
$3,500	1st through 14th Day
$5,000	15th through 30th Day
$7,500	31st Day and beyond

c. Installation of CEMS. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement identified in Section IV of the Consent Decree regarding the installation and operation of a CEMS by the specified deadlines:

Penalty Per Violation Per Day	Period of Noncompliance
$1000	1st through 30th Day
$1,500	31st through 60th Day
$2,500	61st Day and beyond

d. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section IX of the Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th Day
$750	15th through 30th Day
$1,500	31st Day and beyond

e. Permitting Requirements. The following stipulated penalties shall accrue per Violation per day for each violation of any permitting requirement identified in Section VII of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$1000	1st through 14th Day
$1,500	15th through 30th Day
$2,000	31st Day and beyond

f. Other Violations. The following stipulated penalties shall accrue per violation per Day for each violation of any other requirement of the Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$750	1st through 14th Day
$1,250	15th through 30th Day
$2,000	31st Day and beyond

38. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Per day penalties do not increase from one tier to the next unless the violations are continuous.

39. For violations relating to any Covered Facility, except the Muskogee Facility, Owens-Brockway shall pay any stipulated penalty within 30 Days of receiving the United States' written

demand, unless Owens-Brockway elects within 20 days of receipt of the written demand to dispute the obligation in accordance with the Dispute Resolution Procedure set forth in Section XII below.

40. For violations relating to the Muskogee Facility, Owens-Brockway shall pay stipulated penalties to the United States and ODEQ within 30 Days of a written demand by either Plaintiff, unless Owens-Brockway elects within 20 days of receipt of the written demand to dispute the obligation in accordance with the Dispute Resolution Procedure set forth in Section XII below. Stipulated penalties for violations related to the Muskogee Facility shall be payable as follows: 50 percent to the United States and 50 percent to ODEQ. The United States and ODEQ will consult with each other prior to making a demand for stipulated penalties regarding the Muskogee Facility. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

41. The United States may in the unreviewable exercise of its discretion, reduce or waive the amount of stipulated penalties that it seeks under this Consent Decree.

42. ODEQ, with respect to violations at the Muskogee Facility, may in the unreviewable exercise of its discretion, reduce or waive the amount of stipulated penalties it seeks under this Consent Decree.

43. Stipulated penalties shall continue to accrue as provided in Paragraph 38, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or ODEQ that is not appealed to the Court, Owens-Brockway shall pay accrued penalties determined to be owing, together with interest, to the United States or ODEQ within 30 Days of the effective date of the agreement or the receipt of EPA's or ODEQ's decision or order.

b. If the dispute is appealed to the Court and the United States or ODEQ prevails in whole or in part, Owens-Brockway shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Owens-Brockway shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

44. Owens-Brockway shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 17, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. Owens-Brockway shall pay stipulated penalties owing to ODEQ in the manner set forth in Paragraph 18.

45. If Owens-Brockway fails to pay stipulated penalties according to the terms of this Consent Decree, Owens-Brockway shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or ODEQ from seeking any remedy otherwise provided by law for Owens-Brockway's failure to pay any stipulated penalties.

46. Subject to the provisions of Section XIV of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Owens-Brockway's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act, its implementing regulations, or an

analogous provision of Oklahoma law, Owens-Brockway shall be allowed a credit, for any stipulated penalties paid, against any statutory or regulatory penalties imposed for such violation.

XI. FORCE MAJEURE

47. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Owens-Brockway, of any entity controlled by Owens-Brockway, or of Owens-Brockway's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Owens-Brockway's best efforts to fulfill the obligation. The requirement that Owens-Brockway exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event: (a) as it is occurring and (b) after it has occurred in order to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Owens-Brockway's financial inability to perform any obligation under this Consent Decree.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Owens-Brockway shall provide notice orally or by electronic or facsimile transmission to EPA and ODEQ (with respect to the Muskogee Facility), within 10 days of when Owens-Brockway first knew that the event might cause a delay. Within 45 days thereafter, Owens-Brockway shall provide in writing to EPA and ODEQ (with respect to the Muskogee Facility) an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Owens-Brockway's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a

statement as to whether, in the opinion of Owens-Brockway, such event may cause or contribute to an endangerment to public health, welfare or the environment. Owens-Brockway shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude Owens-Brockway from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

49. If EPA, after a reasonable opportunity for review and comment by ODEQ (for any Force Majeure events at the Muskogee Facility) agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Owens-Brockway in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

50. If EPA, after a reasonable opportunity for review and comment by ODEQ (for any Force Majeure event at the Muskogee Facility) does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify Owens-Brockway in writing of its decision.

51. If Owens-Brockway elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 45 days after receipt of EPA's notice. In any such proceeding, Owens-Brockway shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be

warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Owens-Brockway complied with the requirements of Paragraphs 47 and 48. If Owens-Brockway carries this burden, the delay at issue shall be deemed not to be a violation by Owens-Brockway of the affected obligation of this Consent Decree identified to EPA and the Court.

XII. DISPUTE RESOLUTION

52. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States and ODEQ to enforce obligations of Owens-Brockway that have not been disputed in accordance with this Section. Owens-Brockway's failure to seek resolution of a dispute under this Section shall preclude Owens-Brockway from raising any such issue as a defense to an action by the United States or ODEQ to enforce any obligation of Owens-Brockway arising under this Consent Decree.

53. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Owens-Brockway sends the United States and, if applicable to the Muskogee Facility, ODEQ, a written Notice of Dispute, or when the United States or ODEQ sends Owens-Brockway a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 Days from the date of the Notice of Dispute, unless extended by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with ODEQ if applicable, shall be considered binding unless, within 45 Days after

the conclusion of the informal negotiation period, Owens-Brockway invokes formal dispute resolution procedures as set forth below.

54. Formal Dispute Resolution. Owens-Brockway shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and, if applicable to the Muskogee Facility, on ODEQ, a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Owens-Brockway's position and any supporting documentation relied upon by Owens-Brockway.

55. The United States, after consultation with ODEQ if applicable to the Muskogee Facility, shall serve their Statement of Position within 45 Days of receipt of Owens-Brockway's Statement of Position. The United States' and ODEQ's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and ODEQ. The United States' and ODEQ's Statement of Position shall be binding on Owens-Brockway, unless Owens-Brockway files a motion for judicial review of the dispute in accordance with the following Paragraph.

56. Owens-Brockway may seek judicial review of the dispute by filing with the Court and serving on the United States and, if applicable, ODEQ, in accordance with Section XVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 15 Days of receipt of the Statement of Position of the United States and ODEQ pursuant to the preceding Paragraph. The motion shall contain a written statement of Owens-Brockway's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

57. The United States and, if applicable, ODEQ, shall respond to Owens-Brockway's motion within the time period allowed by the Local Rules of this Court. Owens-Brockway may file a reply memorandum, to the extent permitted by the Local Rules.

58. Standard of Review. In any dispute under Paragraph 56 above, Owens-Brockway shall bear the burden of demonstrating that its position complies with this Consent Decree and the Act and that Owens-Brockway is entitled to relief under applicable law.

59. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Owens-Brockway under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 43. If Owens-Brockway does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. INFORMATION COLLECTION AND RETENTION

60. The United States and ODEQ (with respect to the Muskogee Facility), and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any Covered Facility, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or ODEQ in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Owens-Brockway or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Owens-Brockway's compliance with this Consent Decree.

61. Upon request, Owens-Brockway shall provide EPA and ODEQ or their authorized representatives splits of any samples taken by Owens-Brockway. Upon request, EPA and ODEQ shall provide Owens-Brockway splits of any samples taken by EPA or ODEQ.

62. Notwithstanding the termination provisions of this Consent Decree, until three years after the termination of this Consent Decree, Owens-Brockway shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Owens-Brockway's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or ODEQ, Owens-Brockway shall provide copies of any documents, records, or other information required to be maintained under this Paragraph, subject to an assertion of privilege as described in Paragraph 63.

63. At the conclusion of the information-retention period provided in the preceding Paragraph, Owens-Brockway shall notify the United States and ODEQ at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or ODEQ, Owens-Brockway shall deliver any such documents, records, or other information to EPA or ODEQ. Owens-Brockway may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Owens-Brockway asserts such a privilege, it shall provide the following: (1) the title of the document, record, or

information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Owens-Brockway. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

64. Owens-Brockway may also assert that information required to be provided under this Section is protected as Confidential Business Information (CBI) under 40 C.F.R. Part 2. As to any information that Owens-Brockway seeks to protect as CBI, Owens-Brockway shall follow the procedures set forth in 40 C.F.R. Part 2.

65. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or ODEQ pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Owens-Brockway to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

66. This Consent Decree resolves the civil claims of the United States and ODEQ for the violations alleged in the Complaint filed in this action through the date the Consent Decree is lodged with the Court. This Consent Decree also resolves the civil claims of the United States and ODEQ for the violations alleged in the following notices of violations issued to Owens-Brockway: (1) Notice of Finding of Violation issued to Owens-Brockway Glass Container, Inc. regarding the Muskogee Facility, dated April 29, 2009; (2) Notice and Finding of Violation issued to Owens-Brockway Glass Container, Inc. regarding the Waco Facility, dated April 29,

2009; (3) Notice of Violation, Docket No. CAA-III-07-008, issued to Owens-Brockway Glass Container, Inc. regarding the Clarion and Crenshaw Facilities, dated September 26, 2007; and (4) Notice of Violation, issued to Owens-Brockway Glass Container, Inc. regarding the Atlanta Facility, dated March 16, 2011. The three notices of violations are incorporated in this Consent Decree as Appendix C.

67. Solely with respect to emissions of NO_X at the Covered Facilities, entry of this Consent Decree resolves the civil liability of Owens-Brockway to the United States for the following claims arising from any construction or modification commenced at these Facilities prior to the lodging of this Consent Decree:

a. Claims based on Part C or D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, and the regulations promulgated at 40 C.F.R. § 52.21, 40 C.F.R. §§ 51.165(a) and (b), 40 C.F.R. Part 51, Appendix S, and 40 C.F.R. § 52.25;

b. Claims based on the federally-approved and enforceable SIPs;

c. Claims based on Sections 502(a) and 504(a) of Title V of the Clean Air Act, 42 U.S.C. §§ 7661a(a) and 7661c(a), but only to the extent that such claims are based on Owens-Brockway's failure to obtain a permit that reflects applicable requirements imposed under Parts C or D of Subchapter I; and

d. Claims based on any applicable state and local law counterparts to the provisions listed in the preceding sub-paragraphs of this Paragraph.

68. Solely with respect to emissions of SO_2 and PM at the Waco Facility, entry of this Consent Decree resolves the civil liability of Owens-Brockway to the United States for the following claims arising from any construction or modification commenced at the Waco Facility prior to the lodging of this Consent Decree:

a. Claims based on Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, and the regulations promulgated at 40 C.F.R. § 52.21, and 40 C.F.R. §§ 51.165(a) and (b);

b. Claims based on the federally-approved and enforceable Texas SIP;

c. Claims based on Sections 502(a) and 504(a) of Title V of the Clean Air Act, 42 U.S.C. §§ 7661a(a) and 7661c(a), but only to the extent that such claims are based on Owens-Brockway's failure to obtain a permit that reflects applicable requirements imposed under Parts C of Subchapter I; and

d. Claims based on any applicable state and local law counterparts to the provisions listed in the preceding sub-paragraphs of this Paragraph.

The terms "construction" and "modification" as used in this Paragraph shall have the meanings that those terms are given under the Clean Air Act, as well as under any applicable implementing federal, state, or local regulation or rule in effect on the Date of Lodging of this Consent Decree.

69. The United States and ODEQ reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or ODEQ to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraphs 66-68. The United States and ODEQ further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Owens-Brockway's Covered Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

70. In any subsequent administrative or judicial proceeding initiated by the United States or ODEQ for injunctive relief, civil penalties, other appropriate relief relating to any Covered Facility or Owens-Brockway's violations, Owens-Brockway shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or ODEQ in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraphs 66-68 of this Section.

71. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Owens-Brockway is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Owens-Brockway's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and ODEQ do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Owens-Brockway's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. §§ 7401, et seq., or with any other provisions of federal, state, or local laws, regulations, or permits.

72. This Consent Decree does not limit or affect the rights of Owens-Brockway or of the United States or ODEQ against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Owens-Brockway, except as otherwise provided by law.

73. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XV. COSTS

74. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and ODEQ shall be entitled to collect the costs (including attorneys' fees) incurred in any action to enforce this Consent Decree provided that the United States or ODEQ prevails in the action.

XVI. NOTICES

75. Unless otherwise specified herein, whenever notifications, submissions, statements of position, or communications are required by this Consent Decree, they shall be made in writing, addressed as follows, and delivered by U.S. Mail, postage pre-paid, overnight mail or registered mail, return receipt requested. However, where an e-mail address is provided below, Owens-Brockway shall instead submit all Consent Decree submissions to the designated recipient electronically. Electronic submissions will be deemed submitted on the date they are transmitted electronically and only one electronic submission is required per recipient.

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-09678

and

To EPA:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
Office of Civil Enforcement
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2242-A
Washington, DC 20460

Chief
Office of Air Enforcement & Compliance Assistance
U.S. Environmental Protection Agency - Region 3
Mailcode 3AP20
1650 Arch Street
Philadelphia, PA 19103

Chief
Air Enforcement and EPCRA Branch
U.S. Environmental Protection Agency - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth St. SW
Atlanta, GA 30303-8960

Director
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency - Region 6
1445 Ross Avenue
Suite 1200
Dallas, TX 75202-2733

To ODEQ:

Eddie Terrill, Director
Air Quality Division
707 N. Robinson
P.O. Box 1677
Oklahoma City, OK 73101-1677

To Owens-Brockway:

James Baehren
Senior Vice President, Strategic Planning and General Counsel
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One Michael Owens Way
Perrysburg, OH 43551-2999

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Arnaud de Weert
President, O-I North America
Owens-Illinois, Inc.
One Michael Owens Way
Perrysburg, OH 43551-2999

Rocky N. Unruh
Schiff Hardin LLP
One Market, Spear Street Tower
Suite 3200
San Francisco, CA 94105

76. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

77. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or emailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVII. SALES OR TRANSFER OF OPERATIONAL OR OWNERSHIP INTERESTS

78. No transfer of ownership or operation of any of the Covered Facilities, whether in compliance with the procedures of this Section or otherwise, shall relieve Owens-Brockway of its obligation to ensure that the terms of the Consent Decree are implemented unless the requirements of this Section are implemented and the Court consents to relieve Owens-Brockway of its obligations under the Consent Decree. Any attempt to transfer ownership or operation of any of the Covered Facilities without complying with this Section constitutes a violation of this Consent Decree.

79. At least 45 Days prior to any such transfer, Owens-Brockway shall provide a copy of this Consent Decree to the proposed transferee(s) and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 3 (for prospective transfers of the Crenshaw or Clarion Facilities), EPA Region 4 (for

prospective transfers of the Atlanta Facility), EPA Region 6 (for prospective transfers of the Muskogee or Waco Facilities), ODEQ (for prospective transfers of the Muskogee Facility), and the United States Attorney for the Northern District of Ohio and United States Department of Justice (for prospective transfers of any Covered Facility), in accordance with Section XVI of this Decree (Notices).

80. Owens-Brockway shall expressly condition any transfer, in whole or in part, of ownership of, operation of, or other interest (exclusive of any non-controlling, non-operational shareholder or membership interest) in any of the Covered Facilities, upon the execution by the transferee of a modification to this Consent Decree. This modification shall make the terms and conditions of this Consent Decree applicable to and binding upon the transferee, and shall substitute the transferee for Owens-Brockway as the Party to the Consent Decree that is responsible for complying with the transferred obligations. In the event of such transfer, Owens-Brockway shall provide notice of the transfer to the United States (and to ODEQ if the transfer involves the Muskogee Facility) in accordance with the preceding Paragraph.

81. By no later than 60 days after providing notice of the transfer, Owens-Brockway shall file a motion with the Court to enter the modification to the Consent Decree. This motion shall be granted unless Owens-Brockway and the transferee: (a) fail to show that the transferee has the financial and technical ability to assume the obligations under this Consent Decree, (b) fail to show that the modification effectively transfers the obligations and liabilities of the Consent Decree from Owens-Brockway to the transferee, or (c) the Court finds other good cause for denying the motion. The United States (and ODEQ if the transfer applies to the Muskogee Facility) may oppose the motion.

XVIII. EFFECTIVE DATE

82. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIX. RETENTION OF JURISDICTION

83. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of: 1) resolving disputes arising under this Consent Decree pursuant to Section XII (Dispute Resolution), 2) entering orders modifying this Decree pursuant to Section XX (Modification), or 3) effectuating or enforcing compliance with the terms of this Consent Decree.

XX. MODIFICATION

84. Except as provided in Paragraph 76, the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to the Consent Decree, it shall be effective only upon approval by the Court.

85. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 51, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXI. TERMINATION

86. After Owens-Brockway has completed the requirements of Sections IV (Compliance Requirements) and VII (Permits) of the Consent Decree, has complied with all other requirements of the Consent Decree, and has paid the civil penalty and any accrued stipulated

penalties as required by this Consent Decree, Owens-Brockway may serve upon the United States and ODEQ a Request for Termination, stating that Owens-Brockway has satisfied those requirements, together with all necessary supporting documentation.

87. Following receipt by the United States and ODEQ of Owens-Brockway's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Owens-Brockway has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States after consultation with ODEQ agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

88. If the United States after consultation with ODEQ does not agree that the Decree may be terminated, Owens-Brockway may invoke Dispute Resolution under Section XII of the Consent Decree. However, Owens-Brockway shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 52 of Section XII, until 60 Days after service of its Request for Termination.

XXII. PUBLIC PARTICIPATION

89. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Owens-Brockway consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Owens-Brockway in writing that it no longer supports entry of the Consent Decree.

XXIII. SIGNATORIES/SERVICE

90. Each undersigned representative of Owens-Brockway, ODEQ, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

91. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Owens-Brockway agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIV. INTEGRATION

92. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of the Consent Decree.

XXV. APPENDIX

93. The following appendices are attached to and incorporated as part of this Consent Decree:

"Appendix A" is the Furnace Startup Status Log.

"Appendix B" is the Environmental Mitigation Project Description.

"Appendix C" is the Notices of Violations.

XXVI. FINAL JUDGMENT

94. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, ODEQ, and Owens-Brockway. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this_____ day of _____, 2012.

_____
UNITED STATES DISTRICT JUDGE
Northern District of Ohio

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America, et al. v. Owens-Brockway Glass Container, Inc.* (N.D. Ohio).

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

[redacted]

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

[redacted]

ESPERANZA ANDERSON
Trial Attorney
Pennsylvania Bar No. 62582
STEVEN D. SHERMER
Trial Attorney
District of Columbia Bar No. 486394
KATHERINE M. KANE
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
202-514-4059 (Phone)
Esperanza.anderson@usdoj.gov

STEVEN M. DETTELBACH
United States Attorney
Northern District of Ohio

STEVEN J. PAFFILAS
Assistant United States Attorney
Northern District of Ohio
801 West Superior Avenue
Suite 400
Cleveland, OH 44113
(216) 622-3698 (Phone)
(216) 522-4982 (Fax)
Steven.paffilas@usdoj.gov

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America, et al. v. Owens-Brockway Glass Container, Inc.* (N.D. Ohio).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

[redacted]

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

[redacted]

MELANIE SHEPHERDSON
Attorney
Air Enforcement Division
Office of Civil Enforcement
United States Environmental Protection Agency
Washington, D.C. 20460

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America, et al. v. Owens-Brockway Glass Container, Inc.* (N.D. Ohio).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 3:

[redacted]

SHAWN M. GARVIN
Regional Administrator
U.S. Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America, et al. v. Owens-Brockway Glass Container, Inc.* (N.D. Ohio).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 4:

[redacted]

GWENDOLYN KEYES FLEMING
Regional Administrator
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America, et al. v. Owens-Brockway Glass Container, Inc.* (N.D. Ohio).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6:

[redacted]

JOHN BLEVINS
Director
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave.
Dallas, TX 75202-2733

Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America, et al. v. Owens-Brockway Glass Container, Inc.* (N.D. Ohio).

FOR THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY:

[redacted]

STEVEN A. THOMPSON
Executive Director
707 N. Robinson
P.O. Box 1677
Oklahoma City, OK 73101-1677

THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America, et al. v. Owens-Brockway Glass Container, Inc.* (N.D. Ohio).

FOR THE DEFENDANT OWENS-BROCKWAY GLASS CONTAINER, INC.:

[redacted]

JAMES BAEHREN
Senior Vice President of Strategic Planning and General Counsel

ATTORNEYS FOR DEFENDANT OWENS-BROCKWAY GLASS CONTAINER, INC.:

Morgan, Lewis, and Bockius LLP

WILLIAM H. LEWIS, JR.

Shiff Hardin LLP

ROCKY N. UNRUH

THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America, et al. v. Owens-Brockway Glass Container, Inc.* (N.D. Ohio).

FOR THE DEFENDANT OWENS-BROCKWAY GLASS CONTAINER, INC.:

JAMES BAEHREN
Senior Vice President of Strategic Planning and General Counsel

ATTORNEYS FOR DEFENDANT OWENS-BROCKWAY GLASS CONTAINER, INC.:

Morgan, Lewis, and Bockius LLP

[redacted]
WILLIAM H. LEWIS, JR.

Shiff Hardin LLP

ROCKY N. UNRUH

THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of the *United States of America, et al. v. Owens-Brockway Glass Container, Inc.* (N.D. Ohio).

FOR THE DEFENDANT OWENS-BROCKWAY GLASS CONTAINER, INC.:

_____

JAMES BAEHREN
Senior Vice President of Strategic Planning and General Counsel

ATTORNEYS FOR DEFENDANT OWENS-BROCKWAY GLASS CONTAINER, INC.:

Morgan, Lewis, and Bockius LLP

_____

WILLIAM H. LEWIS, JR.

Shiff Hardin LLP

[redacted]

ROCKY N. UNRUH

APPENDIX A

Furnace Startup Status Log

INSTRUCTIONS:

1. The Plant Batch and Furnace Supervisor (or a Designee) shall complete the log on a daily basis, beginning on the first day that portable natural gas burners are used to heat the furnace.
2. Mark each condition as follows: "Y" if the condition is met; "N" if the condition is not met; "N/A" if the condition does not apply to the particular furnace for conditions #6 and/or #10 only.
3. Notify Corporate Environmental Affairs when Condition #12 has been met.
4. When all conditions are marked with either a "Y" or "N/A" ("N/A" pertains to conditions #6 and/or #10 only) for 5 continuous days, there is a presumption that Furnace Startup could be ended early (i.e. prior to day 70).
5. Plant Manager signs and dates the log after completing day 70.

Plant Location: ________________________________ Furnace ID: ________________________________ Date Furnace Startup Began: ________________________________

Condition #		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70
1	All furnace burners are operating.																																																																						
2	Batchhouse delivering required batch & cullet with all systems functioning properly.																																																																						
3	Batch charging is providing a consistent batch pattern.																																																																						
4	Glass level measurement and control systems are operating properly.																																																																						
5	Combustion controls are functioning properly.																																																																						
6	Electric boost system is operating properly, if applicable to the furnace.																																																																						
7	Temperature monitoring and control equipment is functioning properly.																																																																						
8	Refractory cooling systems are operating properly.																																																																						
9	Furnace pressure equipment is functioning properly.																																																																						
10	Furnace reversal systems are functioning properly, if applicable to the furnace.																																																																						
11	Glass quality parameters are within specifications.																																																																						
12	Furnace contractor has completed the sealing of the furnace, including the crown and the regenerator walls.																																																																						
13	CEMS and COMS are operating and CEMS have satisfied 7-day drift tests.																																																																						

Plant Batch and Furnace Supervisor Name: ____________________

Designee Name: ____________________ Title: ____________________

Plant Manager Name: ____________________

Plant Manager Signture: ____________________ Date: ____________________

APPENDIX B

APPENDIX B – ENVIRONMENTAL MITIGATION PROJECT

GEORGIA RETROFIT PROGRAM

Within thirty (30) Days of the Effective Date of the Consent Decree, Owens-Brockway shall contribute $200,000 to the Georgia Retrofit Program. The Georgia Retrofit Program provides funding assistance to help school systems in the twenty county metro Atlanta non-attainment area reduce emissions from their school bus fleets by retrofitting buses with emissions control devices or by replacing old buses with newer, lower-emitting buses. Owens-Brockway's contribution will be used for retrofitting existing diesel school buses or white fleet vehicles; and/or purchasing new natural gas, propane, or hybrid electric school buses. Where new natural gas, propane, or hybrid electric school buses are purchased, Owens-Brockway's contribution shall only be used to pay for the difference in cost between a new diesel school bus and a new lower-emitting natural gas, propane, or hybrid electric school bus. Owens-Brockway's contribution shall be used as specified in this paragraph for the Altanta public school system or for other school buses or white fleet vehicles in Fulton County, where one of the company's glass manufacturing plants is located. Contact information regarding the Georgia Retrofit Program is listed below, and additional information about the Program can be found at www.adoptabus.org.

William Cook, Unit Manager, Engines and Fuels Unit
Telephone: 404-363-7031
Email: william_cook@dnr.state.ga.us William.cook@dnr.state.ga.us

Mailing Address:
Georgia Environmental Protection Division
Air Protection Branch
Mobile & Area Sources
Engines & Fuels Unit
4244 International Parkway
Suite 134
Atlanta, GA 30354

APPENDIX C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

APR 2 9 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7007 2560 0002 7737 0427

Mr. Shaun McMackin
V.P. of Manufacturing
Owens-Brockway Glass Container, Inc.
One Michael Owens Way
Perrysburg, OH 43551-2999

Re: Notices of Violation, Owens-Brockway Container Glass Manufacturing Facilities in Muskogee, Oklahoma, and Waco, Texas

Dear Mr. McMackin:

Enclosed are Notices of Violation (NOV) issued to Owens-Brockway Glass Container, Inc., for violations of the Clean Air Act at its container glass manufacturing facilities in Muskogee, Muskogee County, Oklahoma, and Waco, McLennan County, Texas. In the NOVs, the Environmental Protection Agency documents violations of federally enforceable provisions of the Oklahoma State Implementation Plan and the Texas State Implementation Plan.

Please note the opportunity to confer is outlined in each NOV. A request to confer should be directed to Ms. Jan Gerro, Assistant Regional Counsel, within 10 days of receipt of these NOVs. Ms. Gerro can be contacted at (214) 665-2121.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosures

cc: Ms. Susan L. Smith, Counsel
Owens-Brockway Glass Container, Inc.
One Michael Owens Way
Perrysburg, OH 43551

Ms. Kendal Stegmann, Manager
Compliance and Enforcement Group
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Mr. Gary Goldman, Air Section Manager
Texas Commission on Environmental Quality
6801 Sanger Avenue, Ste. 2500
Waco, TX 76710-7826

Bryan Sinclair, Director
Enforcement Division
Texas Commission on Environmental Quality
MC 219
P.O. Box 13087
Austin, TX 78711-3087

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
	)	
OWENS BROCKWAY	)	NOTICE OF VIOLATION
GLASS CONTAINER, INC	)	
	)	
ONE MICHAEL OWENS WAY	)	
PERRYSBURG, OHIO 43555-2999	)	

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Owens-Brockway Glass Container, Inc. (O-B), for violation of the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*, at its container glass manufacturing plant located in Muskogee, Muskogee County, Oklahoma. Specifically, O-B has violated the Prevention of Significant Deterioration (PSD) and the New Source Review (NSR) permitting requirements of the Oklahoma State Implementation Plan (SIP) at its Muskogee, Oklahoma facility.

This Notice is issued pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). Section 113(a) of the CAA requires the Administrator of the United States Environmental Protection Agency (EPA) to notify any person in violation of a SIP or permit of the violations. The authority to issue this Notice has been delegated to the Regional Administrator of EPA, Region 6, and re-delegated to the Director, Compliance Assurance and Enforcement Division, EPA, Region 6.

A. STATUTORY AND REGULATORY BACKGROUND

(1) The National Ambient Air Quality Standards

1. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1), provides that the statute is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

2. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each pollutant, the emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse sources, including stationary sources.

3. For each such "criteria" pollutant, Section 109 of the CAA, 42 U.S.C. § 7409, subsequently requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

4. Pursuant to these requirements under the CAA, EPA has identified nitrogen oxides (NO_x), sulfur dioxide (SO_2), and particulate matter (PM) (now measured in the ambient air as PM_{10} and $PM_{2.5}$) as such pollutants, and promulgated NAAQS for each pollutant. 40 C.F.R. §§ 50.4 – 50.11.

5. Under Section 110 of the Clean Air Act, 42 U.S.C. § 7410, each state must adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of NAAQS.

(2) Federal Provisions Regarding New Source Review (NSR) and Prevention of Significant Deterioration (PSD)

6. Part C of Title I of the CAA (Sections 160 through 169) establishes the federal Prevention of Significant Deterioration (PSD) permitting program and requires each state to include a PSD program as part of its SIP.

7. Pursuant to the CAA, new and modified sources of pollution are required to undergo new source review (NSR), a permitting process that consists of two programs: a PSD program applying to areas of the U.S. that are classified as attaining air quality standards, 42 U.S.C. §§ 7470-7479; and a Nonattainment NSR program for areas classified as "nonattainment" of air quality standards, 42 U.S.C. §§ 7501-7515.

8. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), specifically prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable, unless a permit has been issued that comports with the requirements of Part C of Title I of the CAA.

9. On June 19, 1978, EPA established regulations implementing the federal PSD program at 40 C.F.R. § 52.21. *See* 43 Fed. Reg. 26,403 (June 19, 1978). Since that time, the PSD regulations have been revised, with subsequent revisions incorporated under 40 C.F.R. § 52.21.

10. The relevant regulations for purposes of this Notice are the regulations in effect at the time of the violation.

11. Under rules promulgated by EPA in Chapter 40, Section 52.21 of the C.F.R., requirements for a PSD program are set out, which include a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP pursuant to § 51.166 of [Chapter 40] to implement the requirements of that section. [40 C.F.R. § 52.21(b)(1991) and (1992).

12. Specifically, if a major stationary source located in an attainment area is planning to make a major modification, applicable PSD regulations require preconstruction review and permitting for the modifications. To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.

13. Section 161 of the CAA, 42 U.S.C. § 7471, provides that each SIP must include a PSD program. Accordingly, requirements for incorporating PSD regulations into SIP Approved programs were also promulgated, establishing requirements for "emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality" that must be contained in each state implementation plan. *See* 43 Fed. Reg. 26,382. These regulations were originally codified under 40 C.F.R. § 51.24 (1979) and subsequently redesignated at 40 C.F.R. § 51.166. *See* 51 Fed. Reg. 40,661 (Nov. 7, 1986) (effective Dec. 8, 1986).

14. The applicable air quality regulations, promulgated by the State of Oklahoma pursuant to the requirements of 40 C.F.R. § 51.166, have been incorporated into the Oklahoma SIP and subsequently approved by EPA.

15. Notwithstanding those sources specifically listed in the rules, "major stationary source" is defined to include "any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation." *See* 40 C.F.R. § 52.21(b)(1)(i)(*b*) (1991) and (1992); *see also* OAPCR 1.4.4(b)(1)(B).

16. For relevant purposes here, "major modification" means "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation." *See* 40 C.F.R. § 52.21(b)(2)(i) (1991) and (1992); *see also* OAPCR 1.4.4(b)(2).

17. "Net emissions increase" means, in relevant part:

> the amount by which the sum of the following exceeds zero:
>
> (*a*) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and
> (*b*) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise credible.

See 40 C.F.R. § 52.21(b)(3)(i) (1991) and (1992); *see also* OAPCR 1.4.4(b)(3)(A).

18. Attempts by applicants to avoid PSD air quality permit review by splitting a modification into two or more minor modifications constitute circumvention of the PSD requirements, and such modifications will, accordingly, be aggregated by EPA when reviewed for compliance.

19. "Significant" is defined in relevant part to mean, "in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:"

> Nitrogen oxides (NO_x): 40 tons per year (tpy) …

40 C.F.R. § 52.21(b)(23)(i) (1991) and (1992); *see also* OAPCR 1.4.4(b)(22)(A).

20. "Stationary source" is defined to mean "any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation." 40 C.F.R. § 52.21(b)(5) (1991) and (1992); *see also* OAPCR 1.4.4(b)(5).

21. "Building, Structure, Facility or Installation" are defined to mean "all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)...." 40 C.F.R. § 52.21(b)(6) (1991) and (1992); *see also* OAPCR 1.4.4(b)(6).

22. "Construction" is defined to mean "any physical change or change in the method or operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8) (1991) and (1992); *see also* OAPCR 1.4.4(b)(8).

23. "Begin actual construction" is defined, in relevant part, to mean, "in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures." 40 C.F.R. § 52.21(b)(11) (1991) and (1992); *see also* OAPCR 1.4.4(b)(11).

a. Specific PSD Requirements Regarding Preconstruction Permits

24. Subsection (i)(1) of section 52.21 provides that no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. 40 C.F.R. § 52.21(i)(1) (1991) and (1992).

25. Title 40, Section 52.21(k) provides that the owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of : (1) Any national ambient air quality standard in any air quality control region; or (2) Any applicable maximum allowable increase over the baseline concentration in any area. 40 C.F.R. § 52.21(k) (1991) and (1992).

26. Title 40, Section 52.21(m)(1)(i) provides that any application for a permit under 40 C.F.R. § 52.21 shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants: (a) For the source, each pollutant that it would have the potential to emit in a significant amount; (b) for the modification, each pollutant for which it would result in a significant net emissions increase. 40 C.F.R. § 52.21(m)(1)(i) (1991) and (1992).

27. Title 40, Section 52.21(n) provides that the owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21. 40 C.F.R. § 52.21(n) (1991) and (1992).

b. Specific PSD Requirements Regarding Application of Best Available Control Technology (BACT)

28. Under section 169 of the Act, 42 U.S.C. § 7479, "best available control technology" is defined in relevant part as:

> an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis…determines is achievable for such facility through application of production processes and available methods, systems, and techniques….

42 U.S.C. § 7479(3).

29. Similarly, applicable federal regulations provide, in part, that "best available control technology" (BACT) means:

> an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under [the] Act which would be emitted from any proposed…major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such…modification through application of production processes or available methods, systems, and techniques....

40 C.F.R. § 52.21(b)(12) (1991) and (1992).

30. The term "emission limitation" is subsequently defined in section 302 of the Act, 42 U.S.C. § 7602, in relevant part, as:

> a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants *on a continuing basis*, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under [the Act].

42 U.S.C. § 7602(k) (*emphasis added*).

31. At all times relevant to the violations alleged below, the regulations promulgated under 40 C.F.R. § 52.21(j) provide that "a major modification *shall meet* each applicable emissions limitation under the [SIP] and each applicable emissions stand and standard of performance under 40 CFR parts 60 and 61." 40 C.F.R. § 52.21(j)(1).

32. These same regulations promulgated under subsection (j) further provide that:

> [a] major modification *shall apply* [BACT] for each pollutant subject to regulation under the Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

40 C.F.R. § 52.21(j)(3) (1991) and (1992) (*emphasis added*).

33. Accordingly, pursuant to 40 C.F.R. § 51.166(j), each state, including the State of Oklahoma, is required to incorporate provisions in its respective state implementation plan providing that each major modification applies the BACT requirements already required under 40 C.F.R. § 52.21(j).

c. Specific Requirements for Obtaining Operating Permits

34. At all times relevant to the violations alleged below, Title 40, Section 52.21(r) of the Code of Federal Regulations provides that:

> [a]ny owner or operator who constructs or operates a…modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a…modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

40 C.F.R. § 52.21(r) (1991) and (1992).

35. Furthermore, under the rules promulgated under Title 40, Part 70 of the Code of Federal Regulations, each state is required to develop programs for issuing operating permits for major stationary sources, including those covered by New Source Performance Standards and its PSD requirements. *See* 57 Fed. Reg. 32,250 (July 21,1992) (effective July 21, 1992).

36. Pursuant to these rules, "Part 70 sources must obtain an operating permit addressing all applicable pollution control obligations under the [SIP]…or other applicable provisions of the Act." 57 Fed. Reg. 32,250. Accordingly, section 70.1 requires that "[a]ll sources subject to [regulation under the CAA] shall have a permit to operate that assures compliance by the source with *all* applicable requirements." 40 C.F.R. § 70.1(b) (2007) (*emphasis added*).

37. Pursuant to 40 C.F.R. § 70.5(c)(8), in addition to providing a description of how the source will continue to comply with applicable requirements, Part 70 sources are also required to provide a description of how the source will achieve compliance with those "requirements for which the source is not in compliance." 40 C.F.R. § 70.5(c)(8)(ii)(A) and (B) (2007).

38. The regulations promulgated under section 70.6 further specify that each permit issued under Part 70 must incorporate various elements, 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)(1) (2007) (*emphasis added*).

(3) NSR/ PSD Regulations in the Oklahoma SIP

39. On February 13, 1980, EPA approved the State of Oklahoma Air Quality Control Implementation Plan, which was later redesignated the State Implementation Plan for Oklahoma (hereinafter referred to generally as the "Oklahoma SIP"). 45 Fed. Reg. 09741. Numerous subsequent revisions and amendments to the Oklahoma SIP have been approved by EPA, and incorporated by reference into the Code of Federal Regulations. *See* 40 C.F.R § 52.1960 (providing a history of all actions taken by EPA and the state regarding the Oklahoma SIP).

40. On August 25, 1983, EPA approved Oklahoma's PSD program. *See* 48 Fed. Reg. 38,636 (Aug. 25, 1983) (noting that the approval took immediate effect); 40 C.F.R. § 52.1960(c); *and* 40 C.F.R. § 52.1929 (providing for the scope of PSD regulation by the state under the Oklahoma SIP). Pursuant to section 52.1929, the requirements of section 52.21 remain applicable to sources for which EPA retains enforcement authority, including those sources permitted by EPA prior to approval of the Oklahoma PSD program, and those sources located on lands over which Oklahoma lacks jurisdiction under the Clean Air Act. *See* 40 C.F.R. § 52.1929(a); *and* OAPCR 1.4.4(a). Pursuant to its PSD program, the State of Oklahoma issues permits governing the operation and construction of regulated facilities. 48 Fed. Reg. 38,636.

41. Oklahoma's PSD program is promulgated under Oklahoma Air Pollution Control Regulation (OAPCR) 1.4.1 – 1.4.4. *See* 40 C.F.R. § 52.1920(c) (2007); *with* 48 Fed. Reg. 38,636. Prior to January, 1992, EPA approved revisions to OAPCR 1.4, including PSD regulations under 1.4.4, with the approval taking effect on September 23, 1991. *See* 56 Fed. Reg. 33,717 (July 23, 1991). Prior to June, 2006, EPA approved additional revisions to OAPCR 1.4, including the PSD regulations under 1.4.4, with the approval taking effect on January 7, 2000. *See* 64 Fed. Reg. 60,685 (Nov. 8, 1999).

a. Oklahoma Preconstruction Permitting Requirements

42. The Oklahoma SIP requires that a facility obtain a permit "when the…modification of an existing source, results in a net increase in air contaminant emissions as the Commissioner determines appropriate." OAPCR 1.4.1 (c)(1) [relevant provisions approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991)].

43. The Oklahoma SIP also provides that: "[n]o person shall cause or allow the … modification of any source without first obtaining an authority to construct or modify from the Commissioner as to comply with all applicable air pollution rules and regulations, and not to exceed ambient air quality standards or applicable federal new source performance standards. . . ." OAPCR 1.4.2 (a)(1) [relevant provisions approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991)].

44. In addition to the requirements provided under 40 C.F.R. § 52.21(m), OAPCR 1.4.4(f)(1) provides that the owner or operator of a major modification shall conduct and submit as part of a permit application an ambient air quality analysis for each air pollutant subject to regulation under the Act for which the major modification would result in a significant net emissions increase at the source. OAPCR 1.4.4(f)(1)(B) [relevant provisions approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991)].

45. In addition to the requirements provided under 40 C.F.R. § 52.21(k), OAPCR 1.4.4(f)(3) provides that the owner or operator of a major modification shall show that, at the time of start-up, the significant net emissions increase, in conjunction with other applicable emissions increases or reductions, will not contribute to a violation of any NAAQS, and that the increase will not be in excess of any applicable maximum allowable increase over the baseline ambient air concentration. OAPCR 1.4.4(f)(3) [relevant provisions approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991)].

46. In addition to the requirements provided under 40 C.F.R. § 52.21(k), OAPCR 1.4.2(c) similarly provides that the applicant shall guarantee that all data included on the application is true and correct, while subsection (d) provides that the Commissioner will evaluate the permit application based on information provided by the applicant and other available information. OAPCR 1.4.2(c) and (d) [relevant provisions approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991)].

b. Oklahoma Requirements for Application of BACT

47. The Oklahoma SIP provides that "best available control technology" (BACT) means "the control technology to be applied for a major…modification is the best that is available as determined by the Commission on a case[-by-case] [sic] basis taking into account energy, environmental, costs and economic impacts of alternate control technologies." OAPCR 1.4.4(b)(12) [relevant provisions approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991)].

48. In addition to above-mentioned federal statutory and regulatory requirements regarding the application of BACT for major modifications, the Oklahoma SIP similarly requires that any major modification subject to regulation under the Oklahoma SIP apply BACT, providing in relevant part that:

> [a] major modification must demonstrate that the control technology to be applied is the best that is available for each regulated pollutant for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

OAPCR 1.4.4(e)(2) [relevant provisions approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991)].

c. Oklahoma Requirements for Obtaining an Operating Permit

49. The Oklahoma SIP provides for a "dual permitting system," requiring that any source to be established in Oklahoma obtain both a permit to construct and a permit to operate. *See* OAPCR 1.4.1(b)(1) (approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991).

50. Specifically, the Oklahoma SIP requires a permit when the modification of an existing source "results in a net increase in air contaminant emissions as the Commissioner determines appropriate." OAPCR 1.4.1(c)(1) (approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991).

51. Subsection (b)(1) further provides that "a permit to operate is issued after construction is completed" and conditioned upon "demonstration that the source was constructed as designed and the facility does meet the requirements of the permit and the control regulations." OAPCR 1.4.1(b)(1) [relevant provisions approved by EPA at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991)].

52. The Oklahoma SIP expressly prohibits "the operation of a new source for more than a 60-day period without applying for a permit to operate" from the State of Oklahoma. See OAPCR 1.4.3(a)(1) (adopted into Oklahoma SIP, effective Aug. 25, 1983).

53. Pursuant to the federal statutes according to which OAPCR 1.4.3 and other Oklahoma PSD regulations were promulgated, Congress has defined "new sources" of pollution to include "any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source." 42 U.S.C. § 7411(a)(2) (*emphasis added*).

B. FACTUAL BACKGROUND

54. Respondent, Owens-Brockway Glass Container, Inc. (O-B), is a Delaware corporation.

55. As a Delaware corporation, Respondent is a "person" within the meaning of Sections 113(a) and 502 of the CAA, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

56. The Muskogee Facility is located at the southeast corner of the intersection of N York Street and Old Shawnee Road, in the City of Muskogee in Muskogee County, Oklahoma.

57. The Muskogee Facility is owned and operated by Respondent, which is a wholly-owned subsidiary of Owens-Illinois, Inc. (O-I), and is engaged in the manufacture of container glass for the food and beverage industry. The Muskogee Facility began operation in approximately 1947 as Brockway Glass Company, Inc., and was obtained by Respondent from Brockway, Inc. in 1988 as part of O-I's acquisition of Brockway, Inc. and the formation of O-B. The Muskogee facility was owned and operated by Respondent at all times relevant to this NOV.

58. At the Muskogee Facility, Respondent operates two side-port natural-gas-fired regenerative glass-melting furnaces (Furnaces A and B) and other equipment that supports the glass manufacturing process, such as forming machines.

59. In December 2003, O-B obtained Permit 99-129-TV(M-1) for the Muskogee Facility from ODEQ.

60. By letters issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated July 5, 2006, and December 19, 2007, to the Muskogee Facility, EPA Region 6 required Respondent to submit specific information regarding its glass manufacturing facilities located within Region 6.

61. Respondent replied to EPA's Section 114 information requests to the Muskogee Facility with three separate submittals dated October 9, 2006, December 15, 2006, and February 11, 2008.

62. Based upon a review of information gathered pursuant to EPA's Section 114 information requests, at all times relevant to the present cause of action, the Muskogee Facility would meet the definition of a "major stationary source" of NO_x as the facility has the potential to emit more than 250 tons per year of NO_x.

C. VIOLATIONS

63. Violations of the Oklahoma federally approved PSD programs are federally enforceable pursuant to Section 113 of the CAA. 42 U.S.C. § 7413 (2008).

64. Respondent will be presumed to remain in violation as set forth herein, until it establishes continuous compliance with the above-cited requirements.

65. At all times relevant to the present action, Muskogee County, Oklahoma remained classified in 40 C.F.R. § 81.337 as being in an attainment area for the national air standard for SO_2, NO_X, and PM. Therefore, PSD rules applied to any modification or construction at the facility.

66. Upon review of the information provided by O-B, referenced above in Paragraph 611, EPA Region 6 has concluded that Respondent conducted systematic capital projects on furnaces at the Muskogee Facility which increased the facility's capacity to produce container glass.

67. Accordingly, these modifications to the Muskogee Facility represent a "new source," as Congress has defined that term under 42 U.S.C. § 7411(a)(2).

68. Furthermore, the modifications referenced below in Paragraphs 69 through 74, also meet the definition of major modification provided under both 40 C.F.R. § 52.21(b)(2)(i) and OAPCR 1.4.4(b)(2), because they represent: a physical change in or a change in the method of operation of a major stationary source that resulted in a significant emissions increase of a regulated NSR pollutant (specifically NO_x); and a significant net emissions increase of that pollutant from a major stationary source.

(1) **Violation One. Unpermitted major modifications made between October 1991 and February 1992**

69. In 1992, Respondent made several changes to Furnaces A and B in order to increase glass production. The changes included the installation of electric boost, sidewall overcoating, raising the shadow wall, and the replacement of raw material feeders to reduce batch cycles.

70. One or more of the changes detailed above in Paragraph 69 resulted in a significant increase in NO_x emissions, as defined in both the federal PSD regulations, and under OAPCR 1.4.4(b)(22)(A).

71. Pursuant to a review of information gathered pursuant to EPA's Section 114 information requests, it was determined that Respondent did "begin actual construction" to complete modifications, mentioned above in Paragraph 69, during or around October 1991.

72. In failing to apply for or obtain authority from the Commissioner, via necessary construction permits, prior to commencing construction at the Muskogee Facility to add the transformer and modify both furnaces (detailed above in Paragraph 69) between October 1991 and February 1992, Respondent continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under OAPCR 1.4.2(a)(1).

73. In failing to apply BACT to major modifications made at the Muskogee Facility between October 1991 and February 1992 (detailed above in Paragraph 69), and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for major modifications, specifically those provided under OAPCR 1.4.4(e)(2).

74. In reinitiating operations after major modifications, which included the addition of a transformer and modifications made to Furnace A and Furnace B, on or around February 1992, and in continuing to operate thereafter, without obtaining or applying for the required permit to operate following completion of major modifications (detailed above in Paragraph 69), since April 1992, Respondent continues to accrue violations of applicable federal and state PSD regulations, specifically those provided under OAPCR 1.4.1(b)(1) and 1.4.1(c)(1), and OAPCR 1.4.3(a)(1).

(2) **Violation Two. Failure to include BACT in the Title V permit for the Muskogee Facility.**

75. The Title V permit Respondent obtained from ODEQ in December 2003, referenced above in Paragraph 59, did not include BACT for NO_x.

76. Accordingly, the Title V permit issued to O-B in December 2003, referenced above in Paragraph 59, did not include emission limitations for NO_x that assure compliance with the PSD requirements of the Act and the Oklahoma SIP.

77. In failing to assure compliance with all applicable emission limitations, specifically those requiring that it incorporate BACT for NO_x into its permit application and the subsequent permit, Respondent violated and continues to violate Sections 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7761a(a) and 7761c(a), as well as 40 C.F.R. §§ 70.5 and 70.6(a) (2007).

D. ENFORCEMENT

Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), provides that any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of Title V of the CAA, including a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under Title V, the Administrator may issue and administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. OPPORTUNITY FOR CONFERENCE

O-B may, upon request, confer with EPA. The conference will enable O-B to present evidence bearing on the finding of violation, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. O-B has a right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

Jan Gerro (6RC-EA)
Senior Enforcement Counsel
Air, Pesticides & Toxics Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

If you have any legal questions, please feel free to call Ms. Gerro at (214) 665-2121, or Ms. Michelle Kelly for technical questions at (214) 665-7580.

F. EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

Dated: 4/29/09

John Blevins
Director
Compliance Assurance and
Enforcement Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
	)	
OWENS BROCKWAY	)	NOTICE OF VIOLATION
GLASS CONTAINER, INC	)	
	)	
ONE MICHAEL OWENS WAY	)	
PERRYSBURG, OHIO 43555-2999	)	

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Owens-Brockway Glass Container, Inc. (O-B), for violation of the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*, at its container glass manufacturing plant located in Waco, McLennan County, Texas. Specifically, O-B has violated the Prevention of Significant Deterioration (PSD) and the New Source Review (NSR) permitting requirements of the Texas State Implementation Plan (SIP) at its Waco, Texas facility.

This Notice is issued pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). Section 113(a) of the CAA requires the Administrator of the United States Environmental Protection Agency (EPA) to notify any person in violation of a SIP or permit of the violations. The authority to issue this Notice has been delegated to the Regional Administrator of EPA, Region 6, and re-delegated to the Director, Compliance Assurance and Enforcement Division, EPA, Region 6.

A. STATUTORY AND REGULATORY BACKGROUND

(1) The National Ambient Air Quality Standards

1. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1), provides that the statute is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

2. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each pollutant, the emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse sources, including stationary sources.

3. For each such "criteria" pollutant, Section 109 of the CAA, 42 U.S.C. § 7409, subsequently requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

4. Pursuant to these requirements under the CAA, EPA has identified nitrogen oxides (NO_x), sulfur dioxide (SO_2), and particulate matter (PM) (now measured in the ambient air as PM_{10} and $PM_{2.5}$) as such pollutants, and promulgated NAAQS for each pollutant. 40 C.F.R. §§ 50.4 – 50.11.

5. Under Section 110 of the Clean Air Act, 42 U.S.C. § 7410, each state must adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of NAAQS.

(2) Federal Provisions Regarding New Source Review (NSR) and Prevention of Significant Deterioration

6. Part C of Title I of the CAA (Sections 160 through 169) establishes the federal Prevention of Significant Deterioration (PSD) permitting program and requires each state to include a PSD program as part of its SIP.

7. Pursuant to the CAA, new and modified sources of pollution are required to undergo new source review (NSR), a permitting process that consists of two programs: a PSD program applying to areas of the U.S. that are classified as attaining air quality standards, 42 U.S.C. §§ 7470-7479; and a Nonattainment NSR program for areas classified as "nonattainment" of air quality standards, 42 U.S.C. §§ 7501-7515.

8. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), specifically prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable, unless a permit has been issued that comports with the requirements of Part C of Title I of the CAA.

9. On June 19, 1978, EPA established regulations implementing the federal PSD program at 40 C.F.R. § 52.21. *See* 43 Fed. Reg. 26,403 (June 19, 1978). Since that time, the PSD regulations have been revised, with subsequent revisions incorporated under 40 C.F.R. § 52.21.

10. The relevant regulations for purposes of this Notice are the regulations in effect at the time of the violation.

11. Under rules promulgated by EPA in Chapter 40, Section 52.21 of the C.F.R., requirements for a PSD program are set out, which include a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP pursuant to § 51.166 of [Chapter 40] to implement the requirements of that section. 40 C.F.R. § 52.21(b) (1989), (1991), (1992) and (1997).

12. Specifically, if a major stationary source located in an attainment area is planning to make a major modification, applicable PSD regulations require preconstruction review and permitting for the modifications. To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.

13. Section 161 of the CAA, 42 U.S.C. § 7471, provides that each SIP must include a PSD program. Accordingly, requirements for incorporating PSD regulations into SIP Approved programs were also promulgated, establishing requirements for "emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality" that must be contained in each state implementation plan. *See* 43 Fed. Reg. 26,382. These regulations were originally codified under 40 C.F.R. § 51.24 (1979) and subsequently redesignated at 40 C.F.R. § 51.166. *See* 51 Fed. Reg. 40,661 (Nov. 7, 1986) (effective Dec. 8, 1986).

14. The applicable air quality regulations, promulgated by the State of Texas pursuant to the requirements of 40 C.F.R. § 51.166, have been incorporated into the Texas SIP and subsequently approved by EPA.

15. Notwithstanding those sources specifically listed in the rules, "major stationary source" is defined to include "any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation." *See* 40 C.F.R. § 52.21(b)(1)(i)(*b*) (1989), (1991), (1992), and (1997); *see also* 30 Tex. Admin. Code § 116.160 (1995) [incorporating by reference 40 C.F.R. § 52.21 (1994)].

16. For relevant purposes here, "major modification" means "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation." *See* 40 C.F.R. § 52.21(b)(2)(i) (1989), (1991), (1992), and (1997); *see also* 30 Tex. Admin. Code § 116.160 (1995) [incorporating by reference 40 C.F.R. § 52.21 (1994)].

17. "Net emissions increase" means, in relevant part:

> the amount by which the sum of the following exceeds zero:
>
> (*a*) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and
>
> (*b*) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise credible.

See 40 C.F.R. § 52.21(b)(3)(i) (1991), (1992), and (1997); *see also* 30 Tex. Admin. Code § 116.160 (1995) [incorporating by reference 40 C.F.R. § 52.21 (1994)].

18. Attempts by applicants to avoid PSD air quality permit review by splitting a modification into two or more minor modifications constitute circumvention of the PSD requirements, and such modifications will, accordingly, be aggregated by EPA when reviewed for compliance.

19. "Significant" is defined in relevant part to mean, "in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:"

Nitrogen oxides (NO_x):	40 tons per year (tpy)
Sulfur dioxide (SO_2):	40 tpy
Particulate matter (PM):	25 tpy of PM emissions
	15 tpy of PM_{10} emissions

40 C.F.R. § 52.21(b)(23)(i) (1989), (1991), (1992), and (1997); *see also* 30 Tex. Admin. Code § 116.160 (1995) [incorporating by reference 40 C.F.R. § 52.21 (1994)].

20. "Stationary source" is defined to mean "any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation." 40 C.F.R. § 52.21(b)(5) (1989), (1991), (1992), and (1997); *see also* 30 Tex. Admin. Code § 116.160 (1995) [incorporating by reference 40 C.F.R. § 52.21 (1994)].

21. "Building, Structure, Facility or Installation" are defined to mean "all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)...." 40 C.F.R. § 52.21(b)(6) (1989), (1991), (1992), and (1997); *see also* 30 Tex. Admin. Code § 116.160 (1995) [incorporating by reference 40 C.F.R. § 52.21 (1994)].

22. "Construction" is defined to mean "any physical change or change in the method or operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8) (1989), (1991), (1992), and (1997); *see also* 30 Tex. Admin. Code § 116.160 (1995) [incorporating by reference 40 C.F.R. § 52.21 (1994)].

23. "Begin actual construction" is defined, in relevant part, to mean, "in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures." 40 C.F.R. § 52.21(b)(11) (1989), (1991), (1992), and (1997); *see also* 30 Tex. Admin. Code § 116.160 (1995) [incorporating by reference 40 C.F.R. § 52.21 (1994)].

a. Specific PSD Requirements Regarding Preconstruction Permits

24. Subsection (i)(1) of section 52.21 provides that no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. 40 C.F.R. § 52.21(i)(1) (1989), (1991), (1992), and (1997).

25. Title 40, Section 52.21(k) provides that the owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or

reductions (including secondary emissions), would not cause or contribute to air pollution in violation of : (1) Any national ambient air quality standard in any air quality control region; or (2) Any applicable maximum allowable increase over the baseline concentration in any area. 40 C.F.R. § 52.21(k) (1989), (1991), (1992), and (1997).

26. Title 40, Section 52.21(m)(1)(i) provides that any application for a permit under 40 C.F.R. § 52.21 shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants: (a) For the source, each pollutant that it would have the potential to emit in a significant amount; (b) For the modification, each pollutant for which it would result in a significant net emissions increase. 40 C.F.R. § 52.21(m)(1)(i) (1989), (1991), (1992), and (1997).

27. Title 40, Section 52.21(n) provides that the owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21. 40 C.F.R. § 52.21(n) (1989), (1991), (1992), and (1997).

b. Specific PSD Requirements Regarding Application of Best Available Control Technology (BACT)

28. Under section 169 of the Act, 42 U.S.C. § 7479, "best available control technology" is defined in relevant part as:

> an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis…determines is achievable for such facility through application of production processes and available methods, systems, and techniques….

42 U.S.C. § 7479(3).

29. Similarly, applicable federal regulations provide, in part, that "best available control technology" (BACT) means:

> an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under [the] Act which would be emitted from any proposed…major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such…modification through application of production processes or available methods, systems, and techniques....

40 C.F.R. § 52.21(b)(12) (1989), (1991), (1992), and (1997).

30. The term "emission limitation" is subsequently defined in section 302 of the Act, 42 U.S.C. § 7602, in relevant part, as:

> a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants *on a continuing basis*, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under [the Act].

42 U.S.C. § 7602(k) (*emphasis added*).

31. At all times relevant to the violations alleged below, the regulations promulgated under 40 C.F.R. § 52.21(j) provide that "a major modification *shall meet* each applicable emissions limitation under the [SIP] and each applicable emissions stand and standard of performance under 40 CFR parts 60 and 61." 40 C.F.R. § 52.21(j)(1) (1989), (1991), (1992), and (1997) (*emphasis added*).

32. These same regulations promulgated under subsection (j) further provide that:

> [a] major modification *shall apply* [BACT] for each pollutant subject to regulation under the Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

40 C.F.R. § 52.21(j)(3) (1989), (1991), (1992) and (1997)(*emphasis added*).

33. Accordingly, pursuant to 40 C.F.R. § 51.166(j), each state, including the State of Texas, is required to incorporate provisions in its respective state implementation plan providing that each major modification applies the BACT requirements already required under 40 C.F.R. § 52.21(j).

c. Specific Requirements for Obtaining Operating Permits

34. At all times relevant to the violations alleged below, Title 40, Section 52.21(r) of the Code of Federal Regulations provides that:

> [a]ny owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a…modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

40 C.F.R. § 52.21(r) (1989), (1991), (1992), and (1997).

35. Furthermore, under the rules promulgated under Title 40, Part 70 of the Code of Federal Regulations, each state is required to develop programs for issuing operating permits for major stationary sources, including those covered by New Source Performance Standards and its PSD requirements. *See* 57 Fed. Reg. 32,250 (effective July 21, 1992).

36. Pursuant to these rules, "Part 70 sources must obtain an operating permit addressing all applicable pollution control obligations under the [SIP]…or other applicable provisions of the Act." 57 Fed. Reg. 32,250. Accordingly, section 70.1 requires that "[a]ll sources subject to [regulation under the CAA] shall have a permit to operate that assures compliance by the source with *all* applicable requirements." 40 C.F.R. § 70.1(b) (2007) (*emphasis added*).

37. Pursuant to 40 C.F.R. § 70.5(c)(8), in addition to providing a description of how the source will continue to comply with applicable requirements, Part 70 sources are also required to provide a description of how the source will achieve compliance with those "requirements for which the source is not in compliance." 40 C.F.R. § 70.5(c)(8)(ii)(A) and (B) (2007).

38. The regulations promulgated under section 70.6 further specify that each permit issued under Part 70 must incorporate various elements, 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)(1) (2007) (*emphasis added*).

(3) NSR/PSD Regulations Specifically Applicable for Texas Facilities

39. On May 31, 1972, EPA approved the Texas Air Pollution Control Implementation Plan, which was later redesignated the State Implementation Plan for Texas (hereinafter referred to generally as the "Texas SIP"). *See* 37 Fed. Reg. 10,895; *and* 40 C.F.R. §52.2299 (2007). Numerous subsequent revisions and amendments to the Texas SIP have been approved by EPA. Prior to approval of the Texas PSD program, regulations promulgated under Title 40, Section 52.21 of the Code of Federal Regulations were applicable for new source review purposes in Texas. *See* 56 Fed. Reg. 46,116 (Sept. 10, 1991); *and* 40 C.F.R. § 52.21 (1992).

40. On June 24, 1992, EPA approved the Texas PSD program, which was effective on July 24, 1992. *See* 57 Fed. Reg. 28,093 (June 24, 1992); *see also* 40 C.F.R. §§ 52.2299(c) (2007) and 52.2303. Pursuant to its PSD program, the State of Texas issues permits governing the operation and construction of regulated facilities. 57 Fed. Reg. 28,096.

41. Prior to 1998, the Texas PSD program was promulgated under Title 30, Chapter 116 of the Texas Administrative Code. *See* 59 Fed. Reg. 46,556 (Sept. 9, 1994) (approving revisions to the Texas PSD SIP, including the transfer of air quality control regulations from 31 TAC to 30 TAC). Effective October 20, 1997, EPA approved the recodification of Texas PSD regulations under Title 30, Section 116.160 of the Texas Administrative Code. 30 Tex. Admin. Code § 116.160 (1995); *and* 62 Fed. Reg. 44,085 (Aug. 19, 1997).

42. Pursuant to the rules approved by EPA for the Texas SIP and effective October 20, 1997, the Texas PSD program incorporated by reference the federal PSD rules at 40 C.F.R. § 52.21 (as amended June 3, 1993 and effective June 3, 1994), and specifically required "each proposed…major modification in an attainment or unclassifiable area" to comply with the federal regulations. *See* 30 Tex. Admin. Code § 116.160 (1995); *and* 40 C.F.R. § 52.21 (1994).

a. Applicable Federal Regulations Prior to Approval of Texas SIP for PSD

43. Prior to approval of the Texas PSD program in July 1992, EPA specifically provides that the regulations promulgated under Title 40, Section 52.21 of the Code of Federal Regulations were applicable for facilities in Texas subject to PSD review and permitting. *See* 56 Fed. Reg. 46,117; *see also* 40 C.F.R. § 52.21 (1989) and (1992).

i. Preconstruction Permit Requirements

44. Subsection (i)(1) of section 52.21 of the Code of Federal Regulations provides in relevant part that no major modification subject to the requirements in section 52.21 "shall begin actual construction without a permit which states that the…modification will meet those requirements" provided in subsections (j) through (r) of section 52.21. 40 C.F.R. § 52.21(i)(1) (1989), (1991), (1992), and (1997).

45. Title 40, Section 52.21(k) of the Code of Federal Regulations provides that the "owner or operator of…a modification shall demonstrate that allowable emissions increases from the proposed…modification, in conjunction with other applicable emissions increases or reductions…, would not cause or contribute to air pollution" in violation of applicable air quality standards and limits. *See* 40 C.F.R. § 52.21(k) (1989), (1991), (1992), and (1997).

46. Title 40, Section 52.21(m) of the Code of Federal Regulations provides that the owner or operator of a major modification shall conduct and submit as part of a permit application an ambient air quality analysis for each air pollutant subject to regulation under the Act for which the major modification would result in a significant net emissions increase at the source. *See* 40 C.F.R. § 52.21(m) (1989), (1991), (1992), and (1997).

47. Title 40, Section 52.21(n) of the Code of Federal Regulations provides that the owner or operator of the major modification shall submit all information necessary to perform any analysis or make any determination required under section 52.21. 40 C.F.R. § 52.21(n) (1989), (1991), (1992), and (1997).

ii. Application of BACT

48. The regulations promulgated under 40 C.F.R. § 52.21(j) provide that "a major modification *shall meet* each applicable emissions limitation under the [SIP] and each applicable emissions stand and standard of performance under 40 C.F.R. parts 60 and 61." 40 C.F.R. § 52.21(j)(1) (1989), (1991), (1992), and (1997) (*emphasis added*).

49. These same regulations promulgated under subsection (j) further provide that:

> [a] major modification *shall apply* [BACT] for each pollutant subject to regulation under the Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

40 C.F.R. § 52.21(j)(3) (1989), (1991), (1992), and (1997) (*emphasis added*).

iii. Operating Permit Requirements

50. Title 40, Section 52.21(r) of the Code of Federal Regulations provides that:

> [a]ny owner or operator who constructs or *operates* a…modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a…modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

40 C.F.R. § 52.21(r)(1) (1989), (1991), (1992), and (1997) (*emphasis added*).

51. Pursuant to 40 C.F.R. § 52.21(w), "*[a]ny* permit issued under [section 52.21] or a prior version of [section 52.21] *shall remain in effect*, unless and until it expires…or is rescinded." 40 C.F.R. § 52.21(w)(1) (1989), (1991), (1992), and (1997) (*emphasis added*).

b. Applicable PSD Regulations Approved Into the Texas SIP

52. The subsequently approved Texas SIP, promulgated pursuant to the requirements of 40 C.F.R. § 51.166, provide that "each proposed…major modification in an attainment or unclassifiable area shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the United States [EPA] in Title 40 Code of Federal Regulations (CFR) at 40 CFR 52.21 as amended June 3, 1993 (effective June 3, 1994) . . . *hereby incorporated by reference*." 30 Tex. Admin. Code § 116.160 (1995) (*emphasis added*) [relevant provisions approved by EPA at 62 Fed. Reg. 44,086 (Aug. 19, 1997) (effective Oct. 20, 1997)].

i. Preconstruction Permit Requirements in the Texas SIP

53. Subsection (i)(1) of section 52.21 of the Code of Federal Regulations provides in relevant part that no major modification subject to the requirements in section 52.21 "shall begin actual construction without a permit which states that the…modification will meet those requirements" provided in subsections (j) through (r) of section 52.21. 40 C.F.R. § 52.21(i)(1) (1994).

54. Title 30, Section 116.1 of the Texas Administrative Code further provides that "[a]ny person who plans to…engage in the modification of any existing facility which may emit air contaminants into the air of [Texas] *must obtain a permit to construct* pursuant to 116.3(a)...before any actual work is begun on the facility." 30 Tex. Admin. Code § 116.1 (1991) (*emphasis added*) [relevant provisions approved by EPA at 60 Fed. Reg. 49,788 (Aug. 27, 1995) (effective Nov. 27, 1995)].

55. Title 40, Section 52.21(k) of the Code of Federal Regulations provides that the "owner or operator of…a modification shall demonstrate that allowable emissions increases from the proposed…modification, in conjunction with other applicable emissions increases or reductions…, would not cause or contribute to air pollution" in violation of applicable air quality standards and limits. 40 C.F.R. § 52.21(k) (1994).

56. Title 40, Section 52.21(m) of the Code of Federal Regulations provides that the owner or operator of a major modification shall conduct and submit as part of a permit application an ambient air quality analysis for each air pollutant subject to regulation under the Act for which the major modification would result in a significant net emissions increase at the source. 40 C.F.R. § 52.21(k) (1994).

57. Title 40, Section 52.21(n) of the Code of Federal Regulations provides that the owner or operator of the major modification shall submit all information necessary to perform any analysis or make any determination required under section 52.21. 40 C.F.R. § 52.21(n) (1994).

58. Title 30, Section 116.3 of the Texas Administrative Code further provides that "[i]n order to be granted a permit to construct, the owner or operator of the proposed facility shall submit information to the [Texas Commission on Environmental Quality] which will demonstrate" compliance with applicable state and federal air pollution limits and standards. 30 Tex. Admin. Code § 116.3 (1992) [relevant provisions approved by EPA at 62 Fed. Reg. 44,087 (Aug. 19, 1997) (effective Oct. 20, 1997)].

ii. Texas Requirements for Application of BACT

59. Even while incorporating by reference the federal PSD rules promulgated under 40 C.F.R. § 52.21, the PSD provisions promulgated under 30 Tex. Admin. Code § 116.160(b)(1) specifically excluded application of the federal BACT requirements under 52.21(j). *See* 30 Tex. Admin. Code § 116.160(b)(1) (1995).

60. Elsewhere, however, the applicable regulations promulgated by the State of Texas provide for the separate requirement that "[t]he proposed facility will utilize the best available control technology, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility." 30 Tex. Admin. Code § 116.3(a)(3) (1992) [relevant provisions approved by EPA at 62 Fed. Reg. 44,087 (Aug. 19, 1997) (effective Oct. 20, 1997)].

61. Furthermore, in approving the Texas PSD SIP, EPA explicitly required that the State of Texas follow EPA's statutory interpretations and applicable policies, including its interpretation of the BACT definition as containing the following two "core criteria":

> First, a PSD applicant must consider the most stringent control technology (and associated emission limitation) that is available in conducting a PSD analysis. Second, if the applicant proposes as BACT a control alternative that is less effective than the most stringent available, it must demonstrate to the State through objective indicators that case-specific energy, environmental, or economic impacts renders that alternative unreasonable or otherwise not achievable.

54 Fed. Reg. 52,825 (Dec. 22, 1989).

The EPA determined that commitments provided by the State of Texas as a part of its PSD SIP review process were sufficient to commit the state to carry out the PSD program, held to include the proper conduct of BACT analyses, in accordance with the federal requirements established in the Act, applicable regulations, and EPA's statutory and regulatory interpretations. *See id.*

iii. Texas Requirements for Operating Permits

62. Title 40, Section 52.21(r) of the Code of Federal Regulations provides that:

> [a]ny owner or operator who constructs or *operates* a…modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a…modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

40 C.F.R. § 52.21(r)(1) (1994) (*emphasis added*).

63. Title 30, Section 116.1 of the Texas Administrative Code further requires that, even "[i]f a permit to construct is issued by [the State of Texas], the person in charge of the facility must apply for an operating permit pursuant to Section 116.3(b) of this title…within 60 days after the facility has begun operation, unless this 60-day period has been extended by the Executive Director." 30 Tex. Admin. Code § 116.1(a) (1991) [relevant provisions approved by EPA at 60 Fed. Reg. 49,788 (Aug. 27, 1995) (effective Nov. 27, 1995)].

64. Title 30, Section 116.3(b) subsequently provides that the granting of a permit to operate is conditioned upon the facility demonstrating that:

> (1) The facility is complying with the Rules and Regulations of the [State of Texas] and the intent of the Texas Clean Air Act.
>
> (2) The facility has been constructed and is being operated in accordance with the requirements and conditions contained in the permit to construct.

(3) The facility is being operated in accordance with any applicable new source performance standards promulgated by the [EPA] pursuant to authority granted under Section 111 of the [CAA], as amended.

(4) The facility is being operated in accordance with any applicable emission standard for hazardous air pollutants promulgated by the [EPA] pursuant to authority granted under Section 112 of the [CAA], as amended.

30 Tex. Admin. Code § 116.3(b) (1992) [relevant provisions approved by EPA at 62 Fed. Reg. 44,087 (Aug. 19, 1997) (effective Oct. 20, 1997)].

B. FACTUAL BACKGROUND

65. Respondent, Owens-Brockway Glass Container, Inc. (O-B), is a Delaware corporation.

66. As a Delaware corporation, Respondent is a "person" within the meaning of Sections 113(a) and 502 of the CAA, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

67. The Waco Facility is located at 5200 Beverly Drive, in the City of Waco in McLennan County, Texas.

68. The Waco Facility is owned and operated by Respondent, which is a wholly-owned subsidiary of Owens-Illinois, Inc., and is engaged in the manufacture of container glass for the food and beverage industry. The Waco Facility began operation in approximately 1944 as Owens-Illinois Glass Company and was subsequently transferred to O-B. The Waco facility was owned and operated by O-B at all times relevant to this NOV.

69. At the Waco Facility, Respondent operates three natural-gas-fired regenerative glass-melting furnaces (Furnaces A, B, and D), as well as other equipment that supports the glass manufacturing process, such as forming machines.

70. In April 2005, O-B obtained Permit No. 56759 for Furnace B at the Waco Facility, and in May 2005, O-B obtained Permit O2716 for Furnaces A and D at the Waco Facility.

71. By letters issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated July 5, 2006, and October 21, 2007 to the Waco Facility, EPA Region 6 required Respondent to submit specific information regarding its glass manufacturing facilities located within Region 6.

72. Respondent replied to EPA's Section 114 information requests to the Waco Facility, Respondent responded with four separate submittals dated October 9, 2006, December 22, 2006, December 13, 2007, and February 8, 2008.

73. Based upon a review of information gathered pursuant to EPA's Section 114 information requests, at all times relevant to the present cause of action, the Waco Facility would meet the definition of a "major stationary source," based upon the facility's potential to

emit more than 250 tons per year of at least one criteria pollutant (NO_x, SO_2, or PM) at any given time during the period in question.

C. VIOLATIONS

74. Violations of the Texas federally approved PSD program are federally enforceable pursuant to Section 113 of the CAA. 42 U.S.C. § 7413 (2008).

75. Respondent will be presumed to remain in violation as set forth herein, until it establishes continuous compliance with the above cited requirements.

76. At all times relevant to the current action, McLennan County, Texas was classified in 40 C.F.R. § 81.344 as being in an attainment area for the national air standard for SO_2, NO_X, and PM. Therefore, PSD rules applied to any modification or construction at the facility.

77. Upon review of the information provided by O-B, referenced above in Paragraph 722, EPA Region 6 has concluded that Respondent conducted systematic capital projects on furnaces at the Waco Facility which increased the facility's capacity to produce container glass.

78. Accordingly, these modifications to the Waco Facility represent a "new source," as Congress has defined that term under 42 U.S.C. § 7411(a)(2).

79. Furthermore, the modifications referenced below in Paragraphs 860 through 915, Paragraphs 86 through 971, and Paragraphs 92 through 97, meet the definition of major modification provided under both 40 C.F.R. § 52.21(b)(2)(i), because they represent a physical change in or a change in the method of operation of a major stationary source that resulted in a significant emissions increase of a regulated NSR pollutant (SO_2, NO_X, and PM); and a significant net emissions increase of that pollutant from a major stationary source.

a. Violation One. Unpermitted major modifications made between September 1989 and January 1990

80. In late 1989, Respondent added a 1,150 kW unit to Furnace A, resulting in a 2,490 kW electric boost system.

81. Based upon a review of information gathered pursuant to EPA's Section 114 information requests, it was determined that Respondent did "begin actual construction" to complete modifications, mentioned above in Paragraph 80, in or around September 1989.

82. This modification triggered a significant increase in SO_2 and PM emissions as defined under 40 C.F.R. § 52.21(b)(23)(i) (1989), meaning it therefore satisfies the definition of "major modification," under 40 C.F.R. § 52.21(b)(2)(i).

83. In failing to apply for or obtain authority from EPA, via necessary construction permits, prior to commencing construction on modifications made to Furnace A (detailed above in Paragraph 80) at the Waco Facility between September 1989 and January 1990, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations, specifically those provided under section 52.21(i)(1). *See* 40 C.F.R. § 52.21(i)(1) (1989).

84. In failing to apply BACT to major modifications made to Furnace A (detailed above in Paragraph 80) at the Waco Facility between Sept 1989 and Jan 1990 and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal PSD requirements for major modifications, specifically those provided under section 52.21(j). *See* 40 C.F.R. § 52.21(j)(1) (1989).

85. In reinitiating operations at the Waco Facility, in or around Jan 1990, without obtaining or applying for the required permits prior to or following the completion of a major modification to Furnace A (detailed above in Paragraph 80), and in continuing operations thereafter, Respondent continues to accrue violations of applicable federal PSD regulations, specifically those under sections 52.21(r) and (w). *See* 40 C.F.R. § 52.21(r)(1) and (w) (1989).

b. Violation Two. Unpermitted major modifications made between April 1992 and May 1992

86. In 1992, Respondent completed a major rebuild at Furnace B of the Waco Facility. Concurrent with the major rebuild, Respondent made the following changes that resulted in an increase in glass production, including: changes to the furnace melter depth, furnace overcoating, and the installation of additional electric boost capacity.

87. One or more of these changes detailed above in Paragraph 866 resulted in a significant increase in NO_x and SO_2 emissions as defined under 40 C.F.R. § 52.21(b)(23)(i) (1991) and (1992).

88. Pursuant to a review of information gathered pursuant to EPA's Section 114 information requests, it was determined that Respondent did "begin actual construction" to complete modifications, mentioned above in Paragraph 866, on or about April 1992.

89. In failing to apply for or obtain authority from EPA, via necessary construction permits, prior to commencing construction on modifications made to Furnace B and the transformer (detailed above in Paragraph 866) at the Waco Facility between April 1992 and May 1992, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations, specifically those provided under section 52.21(i)(1). *See* 40 C.F.R. § 52.21(i)(1) (1991) and (1992).

90. In failing to apply BACT to major modifications made to Furnace B and the transformer (detailed above in Paragraph 86) at the Waco Facility between April 1992 and May 1992, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal PSD requirements for major modifications, specifically those provided under section 52.21(j). *See* 40 C.F.R. § 52.21(j)(1) (1991) and (1992).

91. In reinitiating operations at the Waco Facility, in or around May 1992, without obtaining or applying for the required permits prior to or following completion of major modifications to Furnace B and the transformer (detailed above in Paragraph 866), and continuing operations thereafter, Respondent continues to accrue violations of applicable federal PSD regulations, specifically those provided under sections 52.21(r) and (w). *See* 40 C.F.R. § 52.21(r)(1) and (w) (1991) and (1992).

c. Violation Three. Unpermitted major modifications made between December 1997 and February 1998

92. In 1998, Respondent completed a major rebuild at Furnace D of the Waco Facility. Concurrent with the major rebuild, Respondent made the following changes that resulted in an increase in glass production, including: modifying forming lines along with new forehearths, new raw material charging to the furnace, a change in firing port configuration and the installation of additional electric boost capacity.

93. One or more of the changes referenced above in Paragraph 92 resulted in a significant increase of PM emissions, as defined in section 52.21(b)(23). *See* 40 C.F.R. § 52.21(b)(23) (1997).

94. Pursuant to a review of information gathered pursuant to EPA's Section 114 information requests, it was determined that Respondent did "begin actual construction" to complete modifications, mentioned above in Paragraph 92, on or about December 22, 1997.

95. In failing to apply for or obtain authority from the Commissioner, via necessary construction permits, prior to commencing construction on modifications made to Furnace D (referenced above in Paragraph 92) at the Waco Facility between December 1997 and February 1998, Respondent continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(i)(1), as well as those rules promulgated by the State of Texas under Title 30, Sections 116.1 and 116.3 of the Texas Administrative Code. *See* 40 C.F.R. § 52.21(i)(1) (1997); *see also* 30 Tex. Admin. Code § 116.1 (1991) and 30 Tex. Admin. Code § 116.3 (1992).

96. In failing to apply BACT to major modifications made to Furnace D (referenced above in Paragraph 92) at the Waco Facility between December 1997 and February 1998, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for major modifications, specifically those provided under 30 Tex. Admin. Code § 116.3(a)(3). *See* 30 Tex. Admin. Code § 116.3(a)(3) (1992).

97. In reinitiating operation of Furnace D at the Waco Facility without obtaining or applying for the required permit to operate following completion of major modifications (referenced above in Paragraph 92) on or around February 20, 1998, since May 1998, Respondent continues to accrue violations of applicable federal PSD regulations, specifically those provided under 40 C.F.R. § 52.21(r), as well as those provided under 30 Tex. Admin. Code §§ 116.1(a) and 116.3(b). *See* 40 C.F.R. § 52.21(r)(1) (1997); *see also* 30 Tex. Admin. Code § 116.1(a) (1991) and 30 Tex. Admin. Code § 116.3(b) (1992).

d. Violation Four. Failure to include BACT in the Title V permit for the Waco Facility.

98. The Title V permits Respondent obtained from TCEQ in April 2005 and May 2005, referenced above in Paragraph 700, did not include BACT for NO_x, SO_2, and PM.

99. Accordingly, the Title V permits issued to O-B in April 2005 and May 2005, did not include emission limitations for NO_x, SO_2 and PM that assure compliance with the PSD requirements of the Act and the Texas SIP.

100. In failing to assure compliance with all applicable emission limitations, specifically those requiring that it incorporate BACT for NO_x, SO_2, and PM into its permit applications and the subsequent permits, Respondent violated and continues to violate Sections 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7761a(a) and 7761c(a), as well as 40 C.F.R. §§ 70.5 and 70.6(a) (2007).

D. ENFORCEMENT

Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), provides that any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of Title V of the CAA, including a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under Title V, the Administrator may issue and administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. OPPORTUNITY FOR CONFERENCE

O-B may, upon request, confer with EPA. The conference will enable O-B to present evidence bearing on the finding of violation, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. O-B has a right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

Jan Gerro (6RC-EA)
Senior Enforcement Counsel
Air, Pesticides & Toxics Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

If you have any legal questions, please feel free to call Ms. Gerro at (214) 665-2121, or Ms. Michelle Kelly for technical questions at (214) 665-7580.

F. EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

Dated: 4/29/09

John Blevins
Director
Compliance Assurance and
Enforcement Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:	
Owens-Brockway Glass Container Inc. One Michael Owens Way Perrysburg, OH 43551-2999	**NOTICE OF VIOLATION**
	DOCKET NO. CAA-III-07-008

STATUTORY AUTHORITY

This NOTICE OF VIOLATION ("NOV") is issued pursuant to Section 113(a)(1) and (3) of the Clean Air Act (the "Act"), as amended on November 15, 1990 by P.L. 101-549, 42 U.S.C. § 7413(a)(1) and (3), to Owens-Brockway Glass Container Inc. ("O-B") for violations of the Act and the Pennsylvania State Implementation Plan ("SIP") at its glass manufacturing plants located in Clarion Borough, Clarion County, Pennsylvania (the "Clarion Facility"), and Brockport, Snyder Township, Jefferson County, Pennsylvania (the "Crenshaw Facility"). Section 113(a)(1) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify a person in violation of a SIP or permit of the violation. The authority to issue NOVs has been delegated to the Director of EPA Region III's Air Protection Division. A description of the regulatory background, the relevant facts, and a list of the specific violations identified by EPA are outlined below. The geographical jurisdiction of EPA Region III includes the Commonwealth of Pennsylvania.

FINDINGS OF FACT

1. EPA is authorized by Section 113 of the Act, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable SIPs or permits.

2. The Clarion and Crenshaw Facilities are owned and operated by O-B, which is a wholly owned subsidiary of Owens-Illinois, Inc. Both Facilities are engaged in the manufacture of glass containers for the food and beverage industry. The Crenshaw Facility was obtained by O-B from Brockway, Inc. in 1988 as part of O-I's acquisition of Brockway, Inc. and the formation of O-B. The Clarion Facility was obtained by Owens-Illinois Glass Company in 1930, and subsequently transferred to O-B. Both Facilities were owned and operated by O-B at all times relevant to this NOV, with the exception of certain of the actions described with

respect to Furnace C at the Crenshaw Facility, which was, as noted, owned and operated by Brockway, Inc. prior to 1988. O-B is hereinafter referred to as "Respondent."

3. Respondent is a "person" within the meaning of Sections 113(a) and 502 of the Act, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. The Clarion and Crenshaw Facilities each operate two natural-gas-fired regenerative glass-melting furnaces. Each Facility also operates equipment that supports the glass manufacturing process, such as forming machines and annealing lehrs.

5. Under Sections 110 and 165 of the Act, 42 U.S.C. §§ 7410 and 7475, EPA has promulgated regulations, found at 40 C.F.R. § 52.21[1], for the prevention of significant deterioration (PSD) of air quality in areas that attain national air standards. Since the Facilities are located in an attainment area for the national air standard for SO_2 and NO_x, PSD rules apply to any modification or construction at the facilities. Under 40 C.F.R. § 52.21(i)(1), actual construction of a major stationary source or major modification in an area designated attainment for a criteria pollutant may not be commenced without a permit meeting the requirements of 40 C.F.R. § 52.21.

6. The applicable implementation plan for the Commonwealth of Pennsylvania (the "Pennsylvania SIP") has been approved by EPA, see 40 C.F.R. Section 52.2020(b), and includes 25 Pa. Code § 127.11, which provides that a person may not cause or permit the construction or modification of an air contamination source, the reactivation of an air contamination source after the source has been out of operation or production for one year or more, or the installation of an air cleaning device on an air contamination source, unless the construction, modification, reactivation or installation has been approved by the Department.

7. At the time O-B made the modifications that are the subject of this NOV, federal PSD permitting requirements were incorporated by reference and made a part of the Pennsylvania SIP. See 40 C.F.R. § 52.2058; 25 Pa. Code Subpart D, Section 127.31 et seq (effective June 18, 1983).[2] Specifically in this regard, 25 Pa. Code § 127.83 provides that the PSD requirements promulgated by EPA pursuant to Section 161 of the Clean Air Act, 42 U.S.C. § 7471, codified at 40 C.F.R. Part 52, are adopted in their entirety and incorporated by reference.

8. 40 CFR § 52.21(b)(1)(i)(a) defines a "Major stationary source" as, inter alia, any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal

[1] References in this NOV to provisions of Title 40 of the Code of Federal Regulations (CFR), including the provisions of 40 C.F.R. § 52.21, will refer to such provisions as they existed at the time of the actions alleged, prior to the major PSD revisions promulgated in 2002 which are reflected in current volumes of the CFR.

[2] Pennsylvania issued **Error! Main Document Only.**revised New Source Review regulations in 1994, which are included in 25 Pa. Code §§ 127.201-127.217. (Approved by EPA on December 9, 1997 (62 FR 64722)). Revisions to these provisions made after the version approved into the SIP by EPA are not federally enforceable.

cleaning plants (with thermal dryers), kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plant, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants.

9. 40 CFR § 52.21(b)(2)(i) states that "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

10. 40 CFR §52.21(b)(3)(i) states that "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source;

and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

Attempts by applicants to avoid PSD air quality permit review by splitting a modification into two or more minor modifications constitute circumvention of the PSD requirements, and such modifications will, accordingly, be aggregated by EPA when reviewed for compliance.

11. 40 C.F.R. § 52.21(i) provides that no major stationary source or major modification shall begin actual construction without a permit that states that the major stationary source or major modification would meet the requirements of 40 C.F.R. § 52.21(j through r).

12. 40 C.F.R. § 52.21(b)(40) provides that "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in 40 C.F.R. § 52.21(b)(23)) for that pollutant.

13. 40 CFR § 52.21(b)(23)(i) provides that "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emission Rate

Nitrogen oxides: 40 tons per year ("tpy")
Sulfur dioxide: 40 tpy....

14. 40 C.F.R. § 52.21(j) provides that for each pollutant subject to regulation under the Act for which a major modification would result in a significant net emissions increase at the source, the owner or operator of the major modification shall apply best available control technology (BACT) to each proposed emissions unit at which the increase would occur as the result of physical changes and changes in the methods of operation of the unit.

15. 40 C.F.R. § 52.21(k) provides that the owner or operator of a major modification shall show that the significant net emissions increase will not contribute to a violation of any NAAQS, and that the increase will not be in excess of any applicable maximum allowable increase over the baseline ambient air concentration.

16. 40 C.F.R. § 52.21(m) provides that the owner or operator of a major modification shall conduct and submit as part of a permit application an ambient air quality analysis for each air pollutant subject to regulation under the Act for which the major modification would result in a significant net emissions increase at the source.

17. 40 C.F.R. § 52.21(n) provides that the owner or operator of the major modification shall submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21.

18. 40 C.F.R. § 52.21(r) provides that the owner or operator of the major modification shall construct and operate in accordance with the application submitted pursuant to 40 C.F.R. § 52.21.

19. Clarion and Jefferson Counties are classified in 40 C.F.R. § 81.339 as unclassifiable/attainment for ozone. NO_x emissions act as a precursor to ozone formation and are regulated accordingly.

20. The Clarion and Crenshaw Facilities are classified as existing sources which individually have the potential to emit more than 100 tons of NO_x.

21. Section 165 of the Act, 42 U.S.C. § 7475, prohibits the construction of a major emitting facility to which this subpart applies unless a permit has been issued which sets emission limitations that conform to the part.

22. By letter issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated May 4, 2006, EPA Region III required Respondent to submit specific information regarding its glass manufacturing facilities located within Region III.

23. Respondent responded to EPA's Section 114 information request with three separate submittals dated June 19, 2006, September 22, 2006, and November 22, 2006.

24. Upon review of the information provided, EPA Region III has concluded that Respondent conducted systematic capital projects at all of its glass furnaces which increased the facilities' capacity to produce glass containers.

25. In 1988, Respondent installed oxygen enrichment on Furnaces A & B at the Clarion Facility. In 1991, Respondent installed oxygen enrichment on Furnace D at the Crenshaw Facility. The installation of oxygen enrichment on these furnaces had the effect of increasing glass pull rate at the furnaces.

26. In June 1997 O-B installed 1000kW of electric boost on Furnace A at the Clarion Facility. The addition of electric boost allowed the facility to increase its glass production above its previously stated glass manufacturing capacity. This modification triggered a significant increase in NO_x emissions, as defined at 40 C.F.R. § 52.21(b)(40).

27. In May 1984 Respondent completed a major rebuild at Clarion Furnace B which was designed to increase the furnace's output. In addition, in November 1985, 1500kW of electric boost was added to the furnace. These contemporaneous modifications to the glass furnace resulted in a significant increase in the emission of NO_x and SO_2, as defined at 40 C.F.R. § 52.21(b)(40).

28. In 1988, O-B added oxygen enrichment capability to Furnace B at the Clarion Facility. This modification resulted in a significant increase in NO_x emissions, as defined in § 52.21(b)(40).

29. In May 1986, O-B added 2000kW of electric boost to Furnace C at the Crenshaw Facility. This modification to the method of operation resulted in a projected increase in glass production. It also resulted in a significant increase in NO_x emissions, as defined in § 52.21(b)(40).

30. In 1991, O-B conducted a major rebuild of Furnace D at the Crenshaw Facility. This included a new low-profile refiner and the lengthening of the metal line to 17 feet. Also, O-B subsequently replaced their existing 750kW of electric boost with new transformers capable of 1950kW of boost. This was completed to meet the heavy pull rate demands on the glass forming machines. O-B also installed a new batch delivery system and oxygen enrichment, which increased glass production. These projects together resulted in a significant increase in NO_x emissions, as defined in § 52.21(b)(40).

CONCLUSIONS OF LAW

31. The modifications referenced above meet the definition of major modification, as defined in 40 C.F.R. § 52.21(b) because they represent a physical change in or a change in the method

of operation of a major stationary source that resulted in a significant emissions increase of a regulated NSR pollutant (NO_x & SO_2); and a significant net emissions increase of that pollutant from a major stationary source.

32. Since at least June 1997, Respondent has been in violation of § 52.21(i) and Section 165 of the Act, 42 U.S.C. 7475, in its operation of Furnace A of the Clarion Facility because the modifications made to the furnace resulted in a significant increase in NO_x emissions. Respondent failed to meet the requirements of 40 C.F.R. § 52.21(j) through (r), including the requirements to obtain a PSD permit, undergo a technology review, and conduct an air modeling analysis, as required.

33. Since at least May 1984, Respondent has been in violation of § 52.21(i) and Section 165 of the Act, 42 U.S.C. 7475, in its operation of Furnace B of the Clarion Facility because the modifications during the major furnace rebuild resulted in a significant increase in NO_x emissions. Respondent failed to meet the requirements of 40 C.F.R. § 52.21(j) through (r), including the requirements to obtain a PSD permit, undergo a technology review, and conduct an air modeling analysis, as required.

34. Since at least 1988, Respondent has been in violation of § 52.21(i) and Section 165 of the Act, 42 U.S.C. 7475, in its operation of Furnace B of the Clarion Facility because the modifications made to the furnace by the addition of electric boost resulted in a significant increase in NO_x emissions. Respondent failed to meet the requirements of 40 C.F.R. § 52.21(j) through (r), including the requirements to obtain a PSD permit, undergo a technology review, and conduct an air modeling analysis, as required.

35. Since at least May 1986, Respondent has been in violation of § 52.21(i) and Section 165 of the Act, 42 U.S.C. 7475, in its operation of Furnace C of the Crenshaw Facility because the modifications made to the furnace by the addition of electric boost resulted in a significant increase in NO_x emissions. Respondent failed to meet the requirements of 40 C.F.R. § 52.21(j) through (r), including the requirements to obtain a PSD permit, undergo a technology review, and conduct an air modeling analysis, as required.

36. Since at least 1991, Respondent has been in violation of § 52.21(i) and Section 165 of the Act, 42 U.S.C. 7475, in its operation of Furnace D of the Crenshaw Facility because the modifications made to the furnace in altering the dimensions of the furnace, adding electric boost and oxygen enrichment, and installing a new batch delivery system resulted in a significant increase in NO_x emissions. Respondent failed to meet the requirements of 40 C.F.R. § 52.21(j) through (r), including the requirements to obtain a PSD permit, undergo a technology review, and conduct an air modeling analysis, as required.

37. O-B will be presumed to remain in violation as set forth herein until it establishes continuous compliance with the above cited requirements.

ENFORCEMENT

Section 113(a) of the Act, as amended, 42 U.S.C. § 7413(a), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, et seq., as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, et seq., and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that at any time after the expiration of 30 days following the date on which a NOV is issued, the Administrator of EPA, or an EPA official authorized to act as his representative, may, without regard to the period of violation (subject to 28 U.S.C. § 2462):

(a) issue an order requiring compliance with the requirements of the state implementation plan or permit, or

(b) issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to $25,000 per day of violation for violations occurring on or before January 30, 1997, $27,500 per day of violation for violations occurring after January 30, 1997, and $32,500 per day of violation for violations occurring after March 14, 2004, or

(c) bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than $25,000 per day for each violation occurring on or before January 30, 1997, $27,5000 per day of each violation for violations occurring after January 30, 1997, and $32,500 per day of each violation for violations occurring after March 14, 2004.

Further, Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal penalties or imprisonment, or both, for any person who knowingly violates any plan or permit requirement more than 30 days after the date of the issuance of a NOV.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act, as amended, 42 U.S.C. § 7413(e)(1), states that the court in an action for assessment of civil or criminal penalties shall, as appropriate in determining the amount of penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act, as amended, 42 U.S.C. § 7413(e)(2), allows the court to assess a penalty for each day of violation from the first date of violation. Where the plaintiff makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or

recurred past the date of this NOV (or a previously issued air pollution control agency NOV for the same violation), the days of violation shall be presumed to include the date of this NOV (or the previous NOV) and each and every day thereafter until Respondents establish that continuous compliance has been achieved, except to the extent that Respondents can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

Respondents may, upon request, confer with EPA to discuss this NOV. If Respondents request a conference with EPA, Respondents should be prepared to describe the causes of the violation and to describe any actions Respondents may have taken or propose to take to bring the Facility into compliance. Respondents have the right to be represented by counsel. Respondents must submit any request for a conference with EPA within 10 days of receipt of this NOV. A request for a conference with EPA, and/or any inquiries regarding this NOV, should be submitted in writing to:

Bruce J. Augustine
Air Enforcement Branch, 3AP12
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

EFFECTIVE DATE

This NOV shall be effective immediately upon receipt.

QUESTIONS REGARDING NOV

If you have any questions concerning this Notice of Violation, you may contact Mr. Bowen Hosford, Acting Chief, Air Enforcement Branch, at (215) 814-2159, or Bruce J. Augustine at (215) 814-2131.

DISCLOSURE INFORMATION

Certain companies may be required to disclose to the Securities and Exchange Commission (SEC) the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under federal, state or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company may be subject to the same.

EPA is enclosing an Information Sheet entitled "U.S. EPA Small Business Resources," (EPA 300-F-99-004, September 1999), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with federal and state environmental laws.

Judith M. Katz, Director
Air Protection Division

9/26/07
Date

cc: Ms. Joyce E. Epps, Esquire
Director of Air Quality
PADEP – Rachel Carson State Office building
P.O. Box 8468
Harrisburg, PA 17105-8468

Mr. John Guth
Air Quality Program Manager
PADEP Northwest Regional Office
230 Chestnut Street
Meadville, PA 16335

Greg Fried, EPA OECA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

UPS OVERNIGHT

MAR 16 2011

Mr. Shaun McMackin
V.P. of Manufacturing
Owens-Brockway Glass Container, Inc.
One Michael Owens Way
Perrysburg, Ohio 43551-2999

Ms. Susan L. Smith, Counsel
Owens-Brockway Glass Container, Inc.
One Michael Owens Way
Perrysburg, Ohio 43551-2999

Re: Notice of Violation

Dear Mr. McMackin and Ms. Smith:

Enclosed is a Notice of Violation issued to Owens-Brockway Glass Container, Inc. (Owens), under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a). In this Notice of Violation, the Environmental Protection Agency notifies Owens of violations of the nonattainment New Source Review and title V requirements under the Clean Air Act and the Georgia State Implementation Plan at its Atlanta, Georgia, facility.

Please note the opportunity to confer provided in the Notice of Violation. Any request to confer may be directed to Valerie Nowell, Associate Regional Counsel. Ms. Nowell can be reached at (404) 562-9555.

Sincerely,

Beverly H. Banister
Director
Air, Pesticides, and Toxics
Management Division

Enclosure

cc: Lou Musgrove, Georgia EPD

United States Environmental Protection Agency Region 4

In the matter of: **Owens-Brockway Glass Containers, Inc.** Proceedings Pursuant to Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a)

Notice of Violation

STATUATORY AUTHORITY

This NOTICE OF VIOLATION (NOV) is issued pursuant to Section 113(a) of the Clean Air Act (CAA or Act), as amended, 42 U.S.C. § 7413(a), to Owens-Brockway Glass Container, Inc. (Owens) for violations of the CAA and the Georgia State Implementation Plan (SIP) at its glass manufacturing facility in Atlanta, Fulton County, Georgia. Section 113(a) of the CAA requires the Administrator of the United States Environmental Protection Agency (EPA) to notify a person in violation of a SIP or permit of such finding of violation. While notification of CAA title V violations is not required under Section 113(a)(3), EPA is providing notice of title V violations in this NOV. The authority to issue NOVs has been delegated to the Director of EPA Region 4's Air, Pesticides, and Toxics Management Division (APTMD). A description of the relevant facts, statutory and regulatory background, and specific violations identified by EPA are outlined below. The geographical jurisdiction of EPA Region 4 includes the State of Georgia.

FACTUAL BACKGROUND

1. Respondent, Owens, is a Delaware corporation.

2. Owens is a "person" within the meaning of Sections 113 and 502 of the CAA, 42 U.S.C. §§ 7413 and 7661a, and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3. The Owens glass manufacturing facility that is the subject of this NOV is located at 3107 Sylvan Road, Atlanta, Fulton County, Georgia, 30354 (Atlanta facility).

4. The Atlanta facility is owned and operated by Owens, which was formed on April 14, 1987, and is a wholly owned subsidiary of Owens-Illinois, Inc. The Atlanta facility manufactures glass containers for the food and beverage industry.

5. At least four glass-melting furnaces have operated at the Atlanta facility: Furnaces A, B, D and E. In January, 2010, Owens permanently shut down Furnaces D and E, and modified Furnace B to increase its production. Permit Amendment No. 3221-121-0020-V-02-2, January 6, 2010. Violations, if any, arising from the activities in the previous sentence are not included in this NOV. Currently, the Atlanta facility operates two natural-gas-fired regenerative glass-melting furnaces with electric boost, Furnaces A and B, though Furnace A was temporarily idled on or about August, 2010. The Atlanta facility also operates additional equipment that supports the glass manufacturing process, such as forming machines and annealing lehrs.

6. By requests issued pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414, dated June 22, 2007, July 8, 2009, and August 19, 2010, EPA Region 4 required Owens to submit specific information regarding its glass manufacturing facilities located within Region 4.

7. Owens responded to EPA's section 114 information requests with four separate submittals dated: August 21, 2007, July 16, 2009, October 2, 2009 and November 19, 2010.

8. Based upon a review of information gathered pursuant to EPA's Section 114 information requests, the Atlanta facility emits and has the potential to emit hundreds of tons per year (tpy) of oxides of nitrogen (NOx). The Atlanta facility is a major source and a major stationary source under the CAA's New Source Review and title V operating permit programs, and the implementing state and federal regulations. 42 U.S.C. §§ 7511a(c) and 7661(2); Georgia Air Quality Rules, 391-3-1-.03(8)(c)(13)(i) and (10)(a)(ii). This is true for all times relevant to this NOV.

Modifications

9. On or about December 1993 through February 1994, Owens modified Furnace A, by completely rebuilding it. Among other things, the company installed new larger throat and ports, added new "state-of-the-art" systems for melter control and individual port control. These changes increased glass production and NOx emissions.

10. On or about August through September 1999, Owens modified Furnace E, by installing electric boost and increasing natural gas firing, and increasing the size of the alcove and forehearth, among other things. These changes increased glass production and NOx emissions.

11. On or about March through April 2002, Owens modified Furnace A, by installing a larger alcove and forehearth, among other things. These changes increased glass production and NOx emissions.

STATUATORY AND REGULATORY BACKGROUND

12. Under sections 108 and 109 of the CAA, EPA developed National Ambient Air Quality Standards (NAAQS) for six pollutants: carbon monoxide, lead, nitrogen oxides, ozone, sulfur dioxide, and particulate matter. 42 U.S.C. §§ 7408 and 7409. Each area of the country is designated as attainment, nonattainment or unclassifiable with respect to the NAAQS. 42 U.S.C. § 7407.

13. Ozone nonattainment is specifically addressed in Subpart 2 of Part D of Subchapter I of the CAA. 42 U.S.C. §§ 7511 through 7511f. Subpart 2 sets out five levels of nonattainment classifications for ozone--marginal, moderate, serious, severe, and extreme--based upon how close the area comes to meeting the NAAQS, and establishes a graduated regime of control requirements. See 42 U.S.C. § 7511a(a)(1).

14. For *serious* ozone nonattainment areas, Section 182 of the CAA reduces the major source threshold to 50 tpy of NOx or volatile organic compounds (VOCs). 42 U.S.C. § 7511a(c).[1] NOx and VOCs contribute to the formation of ozone.

Attainment Status of Fulton County

15. At all times relevant to the violations listed herein, Fulton County was classified as nonattainment for ozone. 40 C.F.R. § 81.311.

16. Fulton County was initially classified as nonattainment for the ozone NAAQS on March 3, 1978. 43 Fed. Reg. 8962, 8982. Fulton County was still nonattainment for ozone at the time of the 1990 CAA Amendments. Under the ozone classification system of the 1990 CAA Amendments, Fulton County fell within the design value for a *serious* ozone nonattainment area. On November 16, 1991, EPA published notice of Fulton County's *serious* ozone nonattainment designation for the 1-hour ozone standard, effective January 6, 1992. 56 Fed. Reg. 56694, 56744. Fulton County was re-designated as a *severe* nonattainment area for the 1-hour ozone standard, effective January 1, 2004. 68 Fed. Reg. 55469.

Federal Nonattainment New Source Review Provisions

17. Nonattainment New Source Review (NSR) provisions are located at Part D of Subchapter I of the CAA, 42 U.S.C. §§ 7501 through 7515. The nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that these areas make progress towards meeting the NAAQS.

18. Federal nonattainment NSR regulations are described in large part in Appendix S to Part 51 of the Code of Federal Regulations. In addition to Appendix S, federal

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[1] In an attainment area, the major source threshold is either 100 or 250 tpy of any air pollutant, depending on the type of source. 42 U.S.C. § 7479.

regulations setting out the requirements for nonattainment SIPs are located at 40 C.F.R. § 51.165.

19. States with nonattainment areas are required by the CAA to adopt EPA-approved SIPs, or SIP revisions to impose preconstruction permitting on new or modified major sources, and other requirements in areas designated nonattainment. 42 U.S.C. §§ 7502 and 7503. Once EPA approves provisions into a state's SIP, those provisions become federally enforceable, and EPA has authority to enforce the state or local requirements pursuant to Sections 110 and 113(a) of the CAA and 40 C.F.R. § 52.23.

20. Each state's nonattainment SIP must contain provisions requiring permits that conform to the requirements of Section 173 of the Act, 42 U.S.C. § 7503, including sufficient offsetting emissions to ensure reasonable further progress; pollution controls to reduce emissions to the "lowest achievable emission rate (LAER);" a demonstration that all major sources under the control of the owner/operator are in compliance with all applicable CAA requirements; and, an alternative sites analysis, among other things. 42 U.S.C. §§ 7502(c)(5) and 7503(a).

21. Also, each state's nonattainment SIP must provide for the implementation of all reasonably available control technology (RACT) as expeditiously as possible; require reasonable further progress (RFP); contain a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant; quantify the amount of emissions that will be allowed from construction or operation of major new or modified sources; and, provide for contingency measures if the area fails to make RFP, or attain by the attainment date. 42 U.S.C. §§ 7502(c) and 7503(a).

22. Generally, if a major stationary source located in a nonattainment area is planning a major modification, that source must obtain a construction permit requiring pollution controls to reduce emissions to the "lowest achievable emission rate," among other requirements, *before* undertaking the modification. 42 U.S.C. §§ 7502(c) and 7503(a); 40 C.F.R. Part 51, Appendix S; Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(1)(a) and (8).

Georgia SIP Nonattainment New Source Review Provisions

23. EPA approved Georgia's ozone nonattainment program as part of the Georgia SIP on September 18, 1979 (the 1979 Georgia SIP revision). 44 Fed. Reg. 54047. EPA approved many revisions to this program, including on March 8, 1995, and February 2, 1996. 60 Fed. Reg. 12688 and 61 Fed. Reg. 3817. At the time of the December 1993/January 1994 Furnace A modification, federal nonattainment definitions were not incorporated into the Georgia SIP. With the 1995 revisions, Georgia incorporated the definitions from 40 C.F.R. § 51.165(a)(1)(i-xix), into its SIP. The version of 40 C.F.R. § 51.165(a)(1)(i-xix) in effect on November 20, 1994, is the version applicable to the September, 1999, Furnace E modification, and the March/April, 2002, Furnace A modification, described herein.

1979 Georgia SIP Revision

24. At the time EPA approved the 1979 Georgia SIP revision, the Georgia SIP stated: "Any person prior to beginning the construction or modification of any facility which may result in air pollution shall obtain a permit for the construction or modification of such facility from the Director." Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(1)(a) (1976). This provision was submitted by Georgia on December 16, 1975, and approved by EPA on August 20, 1976. 41 Fed. Reg. 35184. The current Georgia SIP contains the identical language.

25. The 1979 Georgia SIP revision defined "modification" as "any change in or alteration of fuels, processes, operation or equipment, (including any chemical changes in processes or fuels) which affects the amount or character of any air pollutant emitted or which results in the emission of any air pollutant not previously emitted." Georgia Air Quality Control Rules, Ch. 391-3-1-.01(33) (1979). This provision was submitted by Georgia on January 17, 1979, approved by EPA on September 18, 1979. 44 Fed. Reg. 54047.

26. The 1979 Georgia SIP revision also stated that "[e]ach application for a permit to construct a new stationary source or modify an existing stationary source shall be subjected to a preconstruction or premodification review by the Director." Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(8) (1979). This provision was submitted by Georgia to EPA on January 17, 1979, and approved by EPA on September 18, 1979. 44 Fed. Reg. 54047. The current Georgia SIP contains the identical language.

27. At the time EPA approved the 1979 Georgia SIP revision, the Georgia SIP stated: "Any person operating a facility from which air contaminants are or may be emitted shall obtain a permit to operate said facility from the Director." Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(2)(a) (1976). The current Georgia SIP contains the same requirement, but with several exemptions.

28. With respect to permits for modifications in nonattainment areas, the 1979 Georgia SIP revision stated that no permit shall be issued unless: emissions from all sources in the area will represent reasonable further progress; the proposed source complies with LAER; the owner/operator demonstrates that all major sources under the control of the owner/operator are in compliance with all applicable requirements; and an alternative site analysis is performed, among other things. Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(8) (1979). This provision was submitted by Georgia on January 17, 1979, approved by EPA on September 18, 1979. 44 Fed. Reg. 54047. The current Georgia SIP contains these requirements as well. See also, 42 U.S.C. §§ 7502(c)(5) and 7503.

29. In sum, under the early version of Georgia's nonattainment SIP, no person was allowed to make "any change in . . . operation or equipment, . . . which affect[ed] the amount or character of any air pollutant emitted . . .," in a nonattainment area, without first obtaining a permit containing the nonattainment NSR requirements listed in the previous paragraph. Georgia Air Quality Control Rules, Ch. 391-3-1-.01(33) (1979); see also, 42 U.S.C. §§ 7502(c)(5) and 7503.

30. As explained herein, Owens' modification of Furnace A in December 1993/January 1994, increased NOx emissions; thus, Owens should have obtained a permit containing the nonattainment NSR requirements, before the modification. 42 U.S.C. §§ 7502(c)(5) and 7503(c); Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(8) (1979).

1995 Georgia SIP Revision

31. The Georgia SIP was revised in 1995, to state: "no permit to construct a new or modified major stationary source, to be located in any area of the State determined and designated by the U.S. EPA Administrator or the Director as not attaining a National Ambient Air Quality Standard . . . shall be issued unless:" offsetting emissions reduction are obtained, sufficient to represent reasonable further progress; the proposed source complies with LAER; the owner/operator demonstrates that all major sources under the control of the owner/operator are in compliance with all applicable requirements; and an alternative site analysis is performed, among other things. Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(8)(c) (1995); see also, 42 U.S.C. §§ 7502(c)(5) and 7503. These changes were approved by EPA on March 8, 1995. 60 Fed. Reg. 12688.

32. The 1995 Georgia SIP revision added "Additional Provisions for Ozone Nonattainment Areas." Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(8)(c)(13) (1995). The 1995 Georgia SIP revision defined "major source" and "major stationary source," in ozone nonattainment areas as "any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds or nitrogen oxides." Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(8)(c)(13)(i) (1995); see also, 42 U.S.C. §§ 7511a(c).

33. The 1995 Georgia SIP revision also added a provision stating:

> Increased emissions of volatile organic compounds or nitrogen oxides resulting from any physical change in, or change in the method of operation of, a stationary source located in [Georgia's ozone nonattainment area] shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this subsection unless the net emissions increase of such air pollutant from such source does not exceed 25 tons when

> aggregated over any period of five consecutive calendar years which includes the calendar year in which such increase occurred.

Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(8)(c)(13)(ii) (1995); see also, 42 U.S.C. § 7511a(c)(6). This provision is identical in the current SIP, and was effective at the time of the September 1999, Furnace E modification and March/April 2002, Furnace A modification, described herein.

34. Under the 1995 Georgia SIP revision, where there is a physical change or change in the method of operation at a source in an ozone nonattainment area that increases emissions of VOCs or NOx, a nonattainment NSR permit is required if the "net emissions increase" of VOCs or NOx from the source will exceed 25 tons when aggregated over any period of five consecutive calendar years which includes the calendar year in which such increase occurred.

35. The federal nonattainment regulations, incorporated by Georgia, define "Net emissions increase" to mean the amount by which the sum of the following exceeds zero: (1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and (2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 51.165(a)(1)(vi)(1994).

36. The federal regulations incorporated by Georgia, explain "Actual emissions . . . shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation." 40 C.F.R. § 51.165(a)(1)(xii)(B)(1994). The definition goes on to say: "The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period." 40 C.F.R. § 51.165(a)(1)(B)(xii)(1994).

37. Subsection (D) of the definition of "actual emissions," states "[f]or any emissions unit (other than an electric utility steam generating unit . . .) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date." 40 C.F.R. § 51.165(a)(1)(xii)(1994).

38. Under the federal regulations incorporated by Georgia, "Potential to emit" is defined as: "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable." 40 C.F.R. § 51.165(a)(1)(iii)(1994).

39. Under the federal regulations incorporated by Georgia, "Federally enforceable" is defined as: "All limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program." 40 C.F.R. § 51.165(a)(1)(xiv)(1994).

40. The federal regulations incorporated by Georgia, explain "contemporaneous" as follows: "An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs." 40 C.F.R. § 51.165(a)(1)(vi)(1994).

41. The federal regulations incorporated by Georgia, explain "creditable" as follows: "An increase or decrease in actual emissions is creditable only if: (1) It occurs within a reasonable period to be specified by the reviewing authority; and, (2) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section which permit is in effect when the increase in actual emissions from the particular change occurs." 40 C.F.R. § 51.165(a)(1)(vi) (1994).

42. With respect to crediting emissions increases, the federal regulations incorporated by Georgia, state that "[a]n increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level." 40 C.F.R. § 51.165(a)(1)(vi)(1994).

43. With respect to crediting emissions decreases, the regulations state that a "decrease in actual emissions is creditable only to the extent that: (1) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions; (2) It is federally enforceable at and after the time that actual construction on the particular change begins; and, (3) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 C.F.R. Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress; (4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change." 40 C.F.R. § 51.165(a)(1)(vi)(1994).

44. Under the federal regulations incorporated by Georgia, "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following: (A) The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or, (B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This

limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or [at a] stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance." 40 C.F.R. § 51.165(a)(1)(xiii)(1994).

Title V Operating Permit Program Provisions

45. Title V of the CAA establishes an operating permit program to be administered by the states with oversight by EPA. Under 42 U.S.C. § 7661a(d), states are required to submit for EPA approval, state programs meeting federal requirements. Federal requirements for these state programs are set out in 40 C.F.R. Part 70. The title V permit program ensures that all of a source's obligations with respect to its air pollutants are contained in one permit document, and that the source will file periodic reports identifying the extent to which it has complied with those obligations.

46. EPA granted final interim approval of Georgia's title V program, effective December 22, 1995. 60 Fed. Reg. 57836. EPA granted final full approval of Georgia's title V program, effective August 7, 2000. 65 Fed. Reg. 36358.

47. After a state's title V program has been approved by EPA, the CAA provides that "it shall be unlawful for any person to violate any requirement of a permit issued under [a title V program]," and prohibits any major source from operating except in compliance with a permit issued under the title V program. 42 U.S.C. § 7661a(a).

48. Each title V permit must include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with "applicable requirements," which includes SIP requirements. 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.1(b); Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(10)(a)(2).

49. "Applicable requirement" is defined to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA . . ." 40 C.F.R § 70.2; Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(10)(a)(4). This means title V permits must contain all the provisions necessary to ensure that all standards and requirements in the SIP are met.

50. Sources must submit timely, accurate and complete title V permit applications - containing sufficient information for the permitting authority to evaluate the source and determine all applicable requirements. 42 U.S.C. § 7661b; 40 C.F.R. § 70.5(a)(2) and (c); Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(10)(c)(5).

51. Sources are required to supplement their applications if they become aware that information they submitted was incomplete or incorrect, and must provide additional

information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit. 40 C.F.R. § 70.5(b); Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(10)(c)(5).

52. Finally, title V sources that are required to obtain a nonattainment NSR permit must revise their title V permits within 12 months of commencing operation after a modification. 40 C.F.R. § 70.5(a)(1)(ii); Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(10)(c)(ii).

53. On October 22, 1996, Owens submitted its initial title V application to Georgia Environmental Protection Division (EPD), for Furnace A, B, D and E. On March 21, 2000, Georgia EPD issued Owens' initial title V permit, number 3221-121-0020-V-01-0.

54. On July 7, 1999, October 13, 1999, and December 18, 2000, Owens submitted applications to revise its title V permit for the addition of electric boost to Furnace E (undertaken in August/September, 1999), among other things. On July 18, 2001, Georgia EPD issued a permit revision.

55. On September 21, 2004, Georgia EPD received Owens' renewal title V permit application. On October 18, 2005, Georgia EPD issued Owens' renewal title V permit, number, 3221-121-0020-V-02-0, which expired on October 18, 2010. On April 12, 2010, Georgia EPD received Owens' renewal title V permit application.

VIOLATIONS

56. Violations of federally-approved Georgia SIP provisions and Georgia's title V program, including the provisions referenced above are federally enforceable. 42 U.S.C. §§ 7410, 7413 and 7661a.

Nonattainment NSR Violations

57. At all relevant times, Fulton County, Georgia, was classified as serious nonattainment for ozone and the Atlanta facility was a major source of NOx.

58. On or about December 1993 through February 1994, Owens modified Furnace A by completely rebuilding it. Among other things, the company installed new and larger throat and ports and added new "state-of-the-art" systems for melter control and individual port control. These changes constituted a modification and increased glass production and NOx emissions.

59. Georgia's nonattainment SIP in effect in December 1993, through February 1994, prohibited any person from making "any change in . . . operation or equipment, . . . which affect[ed] the amount or character of any air pollutant emitted . . . ," without first obtaining a permit containing LAER emission limits among other requirements.

Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.01(33) (1979) and 391-3-1-.03(1)(a) and (8) (1979); 42 U.S.C. §§ 7502(c)(5) and 7503(a).

60. Owens failed to request or obtain a permit containing nonattainment NSR requirements before the December 1993 through February 1994 modification of Furnace A, in violation of the statutory and regulatory requirements referenced above.

61. On or about August through September 1999, Owens modified Furnace E by installing electric boost and increasing natural gas firing, and increasing the size of the alcove and forehearth, among other things. These changes constituted a modification and increased glass production and NOx emissions.

62. There was a net emissions increase of NOx from the Atlanta facility that exceeded 25 tons when aggregated over a period of five consecutive calendar years, including the calendar year of Owens' August through September, 1999 modification of Furnace E.

63. Owens was required to obtain a construction permit containing nonattainment NSR requirements prior to the August through September 1999 modification of Furnace E. 42 U.S.C. § 7502(c)(5); Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(1)(a) and (8)(c) (1995).

64. Owens failed to request or obtain a construction permit containing nonattainment NSR requirements prior to the August through September 1999 modification of Furnace E, in violation of the statutory and regulatory requirements referenced above.

65. On or about March through April 2002, Owens modified Furnace A by installing a larger alcove and forehearth, among other things. These changes constituted a modification and increased glass production and NOx emissions.

66. There was a net emissions increase of NOx from the Atlanta facility that exceeded 25 tons when aggregated over a period of five consecutive calendar years, including the calendar year of Owens' March through April 2002 modification of Furnace A.

67. Owens was required to obtain a construction permit containing nonattainment NSR requirements, prior to the March through April 2002 modification of Furnace A. 42 U.S.C. § 7502(c)(5); Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(1)(a) and (8)(c) (1995).

68. Owens failed to request or obtain a construction permit containing nonattainment NSR requirements prior to the March through April 2002 modification of Furnace A in violation of the statutory and regulatory requirements referenced above.

69. By failing to apply LAER pollution controls and other nonattainment NSR requirements to the modifications referenced above, and by commencing operations each day without such controls and requirements, Owens continues to accrue violations of applicable federal and Georgia SIP nonattainment NSR requirements.

Title V Violations

70. Owens violated the CAA title V provisions and the implementing federal and state regulations because Owens failed to submit timely, accurate and complete title V permit applications containing sufficient information for the permitting authority to evaluate the source and determine all applicable requirements. 42 U.S.C. § 7661b; 40 C.F.R. §§ 70.1, 70.5; Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(10)(c)(5).

71. Owens' initial and renewal title V permit applications were incomplete and inaccurate because they did not include all of the applicable requirements for the Atlanta facility.

    a. Specifically, the applications did not identify the nonattainment NSR requirements, such as LAER limits, as applicable requirements stemming from the previously identified modifications.
    b. Because the nonattainment NSR requirements are part of the Georgia SIP, they are applicable requirements as defined in 40 C.F.R. § 70.2, and should have been listed in Owens' applications, and included in the title V permit.
    c. The permittee is obligated to make a "reasonable inquiry" in identifying applicable requirements in its application. 40 C.F.R. § 70.5(d).

72. Owens continues to violate these provisions by continuing to operate Furnaces A and E without a permit containing all applicable requirements, including, among other things, pollution controls to reduce emissions to LAER.

73. Owens violated the CAA title V provisions and regulations and the Georgia title V program because Owens failed to supplement its applications upon becoming aware that information it submitted was incomplete or incorrect. 40 C.F.R. § 70.5(b); Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(10)(c)(5).

74. Owens violated the CAA title V provisions and regulations and the Georgia title V program because Owens did not obtain a permit revision within 12 months of commencing operation after the 2002 Furnace A modification. 42 U.S.C. § 7661a(a); 40 C.F.R. § 70.5(a)(1)(ii); Georgia Rules and Regulations for Air Quality Control, Ch. 391-3-1-.03(10)(c)(ii).

75. Owens continues to accrue violations of the CAA and the Georgia title V program requirements referenced above by commencing operations each day and continuing to operate without an adequate title V permit, and without submitting complete title V permit applications.

ENFORCEMENT

Section 113(a) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may issue an order requiring compliance with a SIP or permit, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than $25,000 per day for each violation on or before January 30, 1997, and no more than $27,500 per day for each violation after January 30, 1997 but on or before March 15, 2004, $32,500 per day for each violation after March 15, 2004, and $37,500 per day of each violation for violations occurring after January 12, 2009.

OPPORTUNITY FOR CONFERENCE

Owens is hereby offered an opportunity for a conference with EPA. The conference will enable Owens to present evidence bearing on the violations, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Owens has the right to be represented by legal counsel.

Owens must submit any request for a conference with EPA within **ten (10) days** of receiving this NOV. A request for a conference with EPA, and/or any inquiries regarding this NOV, should be submitted in writing to:

Valerie Nowell
Office of Environmental Accountability
U.S. Environmental Protection Agency – Region 4
61 Forsyth St. SW
Atlanta, Georgia 30303

If you have any questions, please feel free to call Ms. Nowell at (404) 562-9555.

EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

Beverly H. Banister
Director
Air, Pesticides, and Toxics
Management Division

MAR 16 2011
Date