

CONSENT ORDER

WITH

OWENS-BROCKWAY GLASS CONTAINER INC.

Registration Number 60923

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10-1.1307, § 10.1-1309, § 10.1-1316, and § 10.1-1184 between the State Air Pollution Control Board and Owens-Brockway Glass Container Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184 of the Code.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.
6. “Facility” means the Owens-Brockway Glass Container Inc. manufacturing business located at 150 Industrial Boulevard, Toano, Virginia.

7. “TRO” means the Tidewater Regional Office of the Department.
8. “Permit” means documented approval by the Board to construct and operate within the Commonwealth of Virginia.
9. “O&M” means operations and maintenance.
10. "Owens-Brockway" means Owens-Brockway Glass Container Inc., a corporation authorized to do business in Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Owens-Brockway owns and operates a glass container manufacturing business located at 150 Industrial Boulevard, Toano, Virginia.
2. In February 1978, Owens-Brockway was issued a permit to construct and operate a manufacturing plant for glass containers at the Facility. The permit authorizes the operation of two glass-melting furnaces with identical rated heat input and production capacities (hereinafter referenced as furnaces "A" and "B").
3. Based upon initial permitting documentation from 1978, the Facility is a major stationary source with potential emissions of sulfur oxide (SO₂) and nitrogen oxide (NO_x) greater than 250 tons per year and total particulate matter (PM) emissions greater than 100 tons per year.
4. Owens-Brockway installed electric boost to furnaces A and B on three occasions as follows:
 - a. Owens-Brockway correspondence dated January 17, 1986 indicates that in 1986, electric boost was added to furnace B, which was expected to enable the Facility to increase peak production without significantly increasing associated emissions.
 - b. Owens-Brockway correspondence dated September 28, 1990, indicates that in 1991, electric boost was added to furnace A, which was expected to enable the Facility to increase maximum production. Reportedly, the increased production was not expected to result in a proportionate increase in air emissions. A stack test conducted on April 13, 1991 revealed the maximum production directly related to the addition of electric boost.

- c. Owens-Brockway correspondence dated April 7, 1995, indicates that additional electric boost was added to furnace B in 1995.
5. By letter dated April 7, 1995, Owens-Brockway requested that DEQ update their files to reflect the upgrading/addition of electric boosting at the tested maximum production capacity. In addition, the letter stated that furnaces A and B were of the same size and style and had identical maximum production capacities.
6. In March 2001, the DEQ-TRO investigated NO_x, SO₂, and PM emissions at the Facility. Emission factors used in the evaluation were taken from the stack tests performed on furnace B on April 17, 1980 and December 7, 1982, the stack test performed on furnace A on April 13, 1991, and AP-42. The agency concluded that the addition of electric boost increased the Facility's potential emissions, resulting in an alleged violation of Virginia Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution in Prevention of Significant Deterioration (PSD) areas (9 VAC 5-80-1720 *et seq.*) DEQ notified Owens-Brockway of the investigation findings by letter dated March 19, 2001.
7. Owens-Brockway requested, and DEQ agreed to the Company's request, to stack test both furnaces in an attempt to establish current emission factors based on production in pounds of pollutant per ton glass. Both parties agreed to apply the stack test emission factors to the production levels before and after the electric boost addition to evaluate compliance. Owens-Brockway conducted the stack tests on furnaces A and B on August 1 through August 3, 2001 using Methods 1 through 5, 6C, 7E, and 202 to determine NO_x, SO₂, and PM emissions. The Department received the results of the stack tests on September 10, 2001.
8. Based on the August 2001 stack tests conducted by Owens-Brockway, DEQ finds the following:
 - a. B furnace past actual emissions were determined by the 1984, 1985, 1993, and 1994 emissions statements. Potential emissions were based on the maximum projected production capacity following the addition of electric boost in 1986 and the electric boosting upgrade in 1995. The DEQ concluded that furnace B had potential emissions increases greater than PSD levels for SO₂ and PM.

- b. Furnace A's past actual emissions were determined by the 1989 and 1988 emissions statements. Potential emissions were based on the maximum projected production capacity following the addition of electric boost in 1991. The DEQ concluded that furnace A had a potential emissions increase greater than PSD levels for SO₂ and PM.
9. 9 VAC 5-80-1710 *et seq.* establish the PSD significant level for SO₂ as potential emission increases equal to or greater than 40 tons per year and for PM as potential emission increases equal to or greater than 25 tons per year. The DEQ calculated emissions increases based on past actual pollutant emissions versus future potential emissions.
10. 9 VAC 5-80-1720(A) states that no owner or other person shall begin actual construction of any major modification without first obtaining from the Board a permit to construct and operate such a source. 9 VAC 5-80-1710 defines "major modification" as "any physical change 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 the regulations under the federal Clean Air Act." A "major stationary source" includes, but is not limited to, sources which emit or have the potential to emit 250 tons per year or more of any regulated air pollutant. SO₂ and PM are pollutants regulated under the Clean Air Act.
11. Owens-Brockway did not obtain permits under 9 VAC 5-80-10 or 9 VAC 5-80-1720 (A) prior to adding electric boost to furnaces A and B.
12. The Department issued Owens-Brockway a Notice of Violation (NOV) on May 3, 2002, indicating alleged violations of Virginia Regulation 9 VAC 5-80-1720(A).

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §10.1-1186.2, §10.1-1307, §10.1-1309, §10.1-1316.C, and §10.1-1184, the Board orders Owens-Brockway, and Owens-Brockway agrees, to perform the actions described below and in Appendices A, B, and C of this Order. In addition, the Board orders Owens-Brockway, and Owens-Brockway voluntarily agrees to pay a civil charge of \$421,650.00 in settlement of the violations cited in this Order. Of this amount, \$128,250.00 may be satisfied through the completion of an approved Supplemental Environmental Project ("SEP") according to Appendix A, the installation of an Electrostatic Precipitator ("ESP"). An additional \$76,944 of the civil charge may be satisfied through the completion of another approved SEP(s) according to Appendix C.

1. Owens-Brockway shall pay \$216,456 of this civil charge within thirty days of the Effective Date of this Order. The payment shall include Owens-Brockway's Federal ID number. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

2. Owens-Brockway shall satisfy up to \$128,250.00 of the civil charge upon completing the SEP described in Appendix A of this Order and will satisfy up to \$76,944 of the civil charge upon completing a SEP(s) described in Appendix C of this Order.
3. The net cost of the SEP(s) to Owens-Brockway shall not be less than the amount set forth in paragraph D.2. If it is, Owens-Brockway shall pay the amount of the difference between the penalty amount set forth in D.2 and the total amount of the satisfactorily completed SEP(s) in accordance with paragraph D.1 of this Order, unless otherwise agreed to by the Department. "Net costs" means the cost of the project minus any tax savings, grants, and five-year operation cost reductions or other efficiencies.
4. Owens-Brockway shall submit written verification to the Department in the form of a certified statement of itemizing cost, invoices and proof of payment, or similar documentation of the overall and net cost of the SEP(s) within 45 days of the project completion.
5. By signing this Order, Owens-Brockway certifies that it has not commenced performance of the SEP(s) before DEQ identified the violations in this Order and approved the SEP(s).
6. Owens-Brockway acknowledges that it is solely responsible for completing the SEP project(s). Any transfer of funds, tasks, or otherwise by Owens-Brockway to a third party, shall not relieve Owens-Brockway of its responsibility to complete the SEP(s) as contained in this Order.
7. In the event it publicizes the SEP(s) or the SEP(s) results, Owens-Brockway shall state in a prominent manner that the project is part of a settlement for an enforcement action.
8. The Department has sole discretion to:

- a. Authorize any alternate SEP(s) proposed by the Facility; and
 - b. Determine whether the SEP(s), or alternate SEP(s), has been completed in a satisfactory manner.
9. Should the Department determine that Owens-Brockway has not completed the SEP(s), or alternate SEP(s), in a satisfactory manner, the Department shall so notify Owens-Brockway in writing. Within 30 days of being notified, Owens-Brockway shall have the opportunity to satisfactorily complete the SEP(s), or alternatively, Owens-Brockway shall pay the amount specified in Paragraph 2 above minus the cost of any satisfactorily completed SEP(s) as provided in paragraph 1 above.
10. Owens-Brockway shall install an Electrostatic Precipitator (“ESP”) to control particulate emissions from furnaces A and B. Details of the ESP are described in Appendix A of this Order. Installation and operation of the unit shall be done in accordance with Appendix A of this Order.
- a. The ESP unit shall be installed in accordance with the specifications listed in Appendix A of this order.
 - b. The purchase order for the ESP unit shall be placed by Owens-Brockway within 120 days of the Effective Date of this Order.
 - c. Owens-Brockway shall commence installation of the ESP unit within 365 days of the Effective Date of this Order.
 - d. The ESP unit shall be connected to the stacks for both furnaces during the facility’s scheduled Holiday shutdown beginning December 24, 2003.
 - e. The ESP unit shall be fully operational within 60 days of the December 24, 2003 shutdown period and Owens shall notify the Department in writing within 70 days of the December 24, 2003 shutdown that the ESP unit is fully operational.
 - f. The ESP unit shall be operated in accordance with 9 VAC 5-20-180 and Owens shall provide notice to the Department of any shutdown, bypass, failure or malfunction of the ESP in accordance with 9 VAC 5-20-180.
11. Owens-Brockway shall install Continuous Emissions Monitors (“CEM”) to monitor nitrogen oxide emissions from furnaces A and B.

- a. The CEM units, data acquisition and reporting software systems to be installed shall be in accordance with the make and model listed in Appendix B of this order.
 - b. The purchase order for the CEM units, data acquisition and reporting software systems shall be placed by Owens-Brockway within 60 days of the Effective Date of this Order.
 - c. Owens-Brockway shall commence installation of the CEM units, data acquisition and reporting software systems within 240 days of the Effective Date of this Order.
 - d. The CEM units, data acquisition and reporting software systems shall be fully operational within 300 days of the Effective Date of this Order.
 - e. Owens-Brockway shall notify the Department in writing at least 10 days prior to conducting the 7 day drift test and the 7 day operational test period.
 - f. Quality assurance requirements, 40 CFR 60 Appendix F, shall be applicable to the installed CEM units. CEM data shall be used for direct NO_x compliance determinations.
 - g. Semi-annual Data Assessment Reports (DAR) in accordance with 40 CFR 60 Appendix F shall be submitted to the Department no later than 30 days after the end of each calendar half.
 - h. Semi-annual Excessive Emissions Reports in accordance with 40 CFR 60.7, in addition to the DAR, shall be submitted to the Department no later than 30 days after the end of each calendar half.
12. Owens-Brockway shall apply for a permit to operate in accordance with § 9 VAC 5-80-10, or § 9 VAC 5-80-1700, within 45 days of the Effective Date of this Order.
 13. Submittals required under Section D above shall be forwarded to Francis L. Daniel, Regional Director, Tidewater Regional Office, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia 23462.
 14. Owens-Brockway neither admits or denies the specific factual allegations and legal conclusions set forth in this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Owens-Brockway, for good cause shown by Owens-Brockway, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the permit.
3. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Owens-Brockway by DEQ on May 3, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
4. For purposes of this Order and subsequent actions with respect to this Order, Owens-Brockway admits the jurisdictional allegations contained in Section A and Section C (9), (10), (11) and (12).
5. Owens-Brockway consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Owens-Brockway declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
7. Failure by Owens-Brockway to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority as to any such violation.

8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Owens-Brockway shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence that is beyond the reasonable control of Owens-Brockway. Owens-Brockway shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Owens-Brockway shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 72 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

10. The parties are entering into this Consent Order to resolve the allegations contained herein without resorting to litigation. In the spirit of compromise, Owens-Brockway is entering into this Consent Order, but Owens-Brockway neither admits nor denies the specific factual allegations and legal conclusions set forth previously.
11. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
12. This Order shall become effective upon execution by both the Director or his designee and Owens-Brockway. Notwithstanding the foregoing, Owens-Brockway agrees to be bound by any compliance date which precedes the Effective Date of this Order.

13. This Order shall continue in effect until monitoring, and reporting requirements of this Order are incorporated into a permit for Owens-Brockway to operate and Owens-Brockway has completed the SEP(s) and paid in full the civil charge described in Section D. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Owens-Brockway from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
14. By its signature below, Owens-Brockway voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Francis L. Daniel, Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

Owens-Brockway Glass Container Inc. voluntarily agrees to the terms and conditions of this Order.

By: _____

Printed Name: _____

Title: Toano Facility Manager

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2002, by _____, who is
(name)

_____ of Owens-Brockway Glass Container Inc., on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____