

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:

BULLSEYE GLASS CO.
an Oregon corporation.

MUTUAL AGREEMENT
AND FINAL ORDER

No. AQ/V-NWR-16-088

WHEREAS:

1. Bullseye Glass Co. (Bullseye) owns and operates a glass manufacturing facility at 3722 SE 21st Avenue, Portland, Oregon (the Facility).

2. The Oregon Department of Environmental Quality (DEQ) regulates sources of air pollution to ensure protection of public health and the environment.

3. DEQ and Bullseye each seek regulatory and operational clarity, compliance with law, and certainty with respect to the operations of Bullseye's glass manufacture operations in Portland, Oregon. It is in the best interests of both DEQ and Bullseye to enter into this Mutual Agreement and Final Order (MAO) to further those common goals.

4. Prior to May 19, 2016, DEQ and Bullseye had sought to secure these objectives through negotiation for a Mutual Agreement and Final Order. To that end, on May 4, 2016, DEQ sent to Bullseye a discussion draft of a proposed MAO. The agreement specified terms under which Bullseye could continue to operate its business, within new limitations, including by operation of furnaces that had no pollution control equipment attached to them. On May 19, 2016, Bullseye returned a revised draft MAO to DEQ and asked DEQ to accept the draft..

5. On May 19, 2016, DEQ issued a final Cease and Desist Order to Bullseye (C&DO), effective for 10 days, and requiring Bullseye not to use any of eight specified metal hazardous air pollutants (HAPs), except in a controlled furnace. Those HAPs are arsenic, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium.

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1 6. The C&DO was entered by DEQ in view of the following information:

2 A. DEQ operates an air quality monitor located at the CCLC daycare facility
3 located at 2215 SE Gladstone Street in Portland, Oregon, across the street from, and to the south
4 of Bullseye.

5 B. Air monitoring data collected from this monitor on May 9, 2016 through
6 May 10th, 2016, and subsequently analyzed by DEQ, registered lead at 416 nanograms per cubic
7 meter over a 24 hour period. Neither the federal Environmental Protection Agency or the
8 Oregon Environmental Quality Commission have adopted a source-specific daily standard for
9 lead emissions. DEQ and OHA, agreed on a 24 hour screening value for lead emissions using
10 accepted national values for protectiveness, and DEQ's Ambient Benchmark Concentration as
11 guidelines. The selected 24 hour screening value is 150 nanograms of lead per cubic meter in
12 air.

13 C. DEQ reviewed operational information provided by Bullseye for the
14 timeframe of May 9, 2016, and May 10, 2016, and DEQ confirmed that Bullseye had
15 manufactured glass on May 9, 2016, and May 10, 2016, that contained a relatively high
16 proportion of lead in its feedstock, and that the pollution control device connected to the furnace
17 being used by Bullseye for that batch was not in service due to suspected malfunctions.

18 D. The prevailing winds on May 9, 2016, and May 10, 2016, blew from the
19 north/northwest as confirmed by DEQ monitoring equipment in the vicinity.

20 E. DEQ consulted with the Oregon Health Authority (OHA). OHA and
21 DEQ, on the same day they received and evaluated the results of the testing of air samples taken
on May 9, 2016, and May 10, 2016, recommended the Governor issue the C&DO. She acted on
the same day.

1 7. Prior to the expiration of the first C&DO, DEQ consulted with OHA. OHA and
2 DEQ recommended to the Governor that she order DEQ to enter an order renewing the C&DO.
3 The Governor directed DEQ to do so, and on May 27, 2016, DEQ renewed the C&DO, effective
4 May 29, 2016, for an additional ten-day period, until June 8, 2016.

5 8. On December 26, 2007, the United States Environmental Protection Agency
6 (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants ("NESHAP")
7 for Glass Manufacturing Area Sources in 40 Code of Federal Regulations (CFR) Part 63, subpart
8 SSSSSS (hereinafter referred to as "6S" or "Regulation 6S"), adopted and incorporated by
9 reference in Oregon Administrative Rule (OAR) 340-244-0220(1). Regulation 6S requires
10 sources subject to the standard to, among other requirements, comply with prescribed emission
11 limits, conduct emissions testing, monitor the performance of pollution control equipment,
12 conduct recordkeeping and reporting and obtain a Title V Operating Permit. Existing sources
13 subject to 6S were required to be in compliance with 6S by December 28, 2009, and new sources
14 subject to 6S were required to be in compliance with 6S upon startup of the new source.

15 9. A glass manufacturing facility is subject to 6S if it is an area source of hazardous
16 air pollutant (HAP) emissions and meets all of the following criteria:

17 A. The glass manufacturing facility is a plant site that manufactures flat glass,
18 glass containers, or pressed or blown glass by melting a mixture of raw materials, as defined in
19 40 CFR § 63.11459, to produce molten glass and form the molten glass into sheets, containers, or
20 other shapes;

21 B. The glass manufacturing facility is an area source of HAP emissions,
which is any stationary source or group of stationary sources within a contiguous area under
common control that does not have the potential to emit any single HAP at a rate of 10 tons per
year or more, or a combination of HAPs at a rate of 25 tons per year or more; and

1 C. The glass manufacturing facility uses one or more continuous furnaces to
2 produce glass that contains compounds of one or more glass manufacturing metal HAPs, as
3 defined in 40 CFR § 63.11459, as raw materials in a glass manufacturing batch formulation.

4 10. On April 12, 2016, EPA sent DEQ a letter clarifying that, for the glass
5 manufacturing NESHAP, the term “continuous furnace” means furnaces that are continuously
6 heated, as are the furnaces at Bullseye’s glass manufacturing facility. EPA’s letter stated that its
7 clarification was non-binding and left applicability determinations for DEQ to make. DEQ has
8 determined that it will apply EPA’s clarification for the purposes of implementing Regulation
9 6S. Bullseye disagrees with EPA’s clarification and asserts that it is not consistent with the
10 applicable definition of continuous furnaces.

11 11. Based upon EPA’s April 12, 2016 letter, DEQ has determined that Bullseye’s
12 glass manufacturing facility is subject to 6S because it meets all of the criteria in paragraph 9,
13 above. Bullseye denies that it was and is subject to Regulation 6S.

14 12. Regulation 6S requires that the emissions from any continuous furnace that makes
15 glass at a rate of at least 50 tons per year or more that contains metal HAPs must be tested, meet
16 emissions standards and be monitored, among other requirements. 40 CFR § 63.11449 through
17 63.11457. Regulation 6S also requires that any facility subject to 6S must obtain a Title V
18 permit. 40 CFR § 63.11449(e).

19 13. Prior to the April 12, 2016 letter from EPA, DEQ had considered Bullseye’s glass
20 manufacturing facility to be exempt from 6S.

21 14. Based upon EPA’s April 12, 2016 letter and other information that Bullseye has
provided to DEQ, DEQ has concluded that Bullseye is now subject to 6S and will be operating in
violation of 6S and OAR 340-244-0220(1) until Bullseye fully complies with the compliance
schedule in paragraph 26 of this MAO and is issued an Oregon Title V Operating Permit in
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1 accordance with paragraph 26. Bullseye disagrees with DEQ's conclusion that it is and will be
2 operating in violation of Regulation 6S and OAR 340-244-0220(1).

3 15. DEQ and Bullseye recognize that the Environmental Quality Commission has the
4 power to impose civil penalties and to issue an abatement order for violations of Oregon
5 environmental law. Bullseye does not agree with DEQ's conclusion that Bullseye has violated 6S
6 and Bullseye makes no admission of any such violation. With these caveats, Bullseye
7 nevertheless voluntarily agrees to enter into this MAO in settlement of any past or future
8 violations referred to in paragraphs 8 through 14 above. Therefore, pursuant to ORS
9 183.417(3)(a) and (b), DEQ and Bullseye agree to settle the violations that may have occurred
10 prior to the date of this agreement, and to limit and resolve future violations referred to in
11 paragraph 14 above, in advance, by this MAO.

12 16. On April 21, 2016, the Environmental Quality Commission (EQC) adopted
13 temporary rules OAR 340-244-9000 through 9090 to address metal HAP emissions from glass
14 manufacturing facilities in the Portland Air Quality Maintenance Area. Bullseye is subject to
15 temporary rules OAR 340-244-9000 through 9090 as adopted and for the duration such
16 temporary rules are effective.

17 17. This MAO is not intended to limit, in any way, DEQ's right to proceed against
18 Bullseye in any forum in the event that there are future violations. DEQ and Bullseye agree that
19 this MAO settles all past claimed violations described in paragraphs 8 through 14, above.

20 NOW THEREFORE, it is stipulated and agreed that:

21 18. The definition section in OAR 340-244-9010 is incorporated into this MAO and
the definitions in that definition section apply to the terms of this MAO.

19 19. Except as provided in paragraph 25 below, Bullseye shall not use any of the
20 following metal HAPs in any uncontrolled furnace at the Bullseye facility:

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- A. Arsenic
- B. Cadmium
- C. Chromium
- D. Cobalt
- E. Lead
- F. Manganese
- G. Nickel
- H. Selenium

20. Bullseye and DEQ agree to incorporate into this MAO by this reference, and to comply with, the provisions of temporary rule OAR 340-244-9000 through 9090, as adopted by the EQC on April 21, 2016, and amended by the EQC on May 5, 2016.

21. As long as this MAO remains in effect, Bullseye and DEQ agree that the provisions of temporary rule OAR 340-244-9000 through 9090 will be binding upon Bullseye, even if the temporary rule expires and is not made permanent. If the temporary rule is made permanent or permanent rules regarding metal HAPs emissions applicable to Bullseye are adopted, Bullseye and DEQ agree that the temporary rule will no longer be binding upon Bullseye as of the effective date of the permanent rule. If requirements or conditions of this MAO, or actions taken pursuant to this MAO, are more stringent than the temporary rule, Bullseye must comply with the more stringent requirements or conditions.

22. Not later than ten business days after the full execution of this MAO, Bullseye shall provide to DEQ:

- A. A list of all furnaces that Bullseye uses, a description of the type and capacity of the furnace, whether emissions from the furnace are currently subject to an emissions control device, and, if so, a description of the device's specifications;

1 B. Copies of all glass-making recipes currently in use by Bullseye that
2 include any of the eight metal HAPs listed in paragraph 19. Bullseye shall designate which, if
3 any, of the recipes provided are claimed by Bullseye to be confidential business information
(CBI);

4 C. A description of the management control systems, practices, and
5 procedures Bullseye will use to ensure it conforms to obligations relating to air emissions and
6 potential air emissions imposed by law and this MAO on Bullseye.

7 D. The full and complete results of all source tests of air emission control
8 devices conducted by Bullseye or by a third party pursuant to a contract with Bullseye in the past
9 60 days, regardless of whether Bullseye or any third party believes the test results to be
unreliable or invalid, and also including, without limitation, all reports for the chromium testing
partially completed during any such source tests;

10 E. The name, qualifications and experience of all environmental consulting
11 firms that have provided services to Bullseye in the last 90 days relating to air emissions, as well
12 as firms expected to provide services in the next 90 days relating to air emissions, to compliance
13 with this MAO, or to both. This report should include a description of the services to be
provided to Bullseye and the role those services have in ensuring compliance with its obligations
relating to air emissions and potential air emissions imposed by law and this MAO on Bullseye;

14 F. A written description for DEQ's review and approval of the procedures
15 that Bullseye is currently implementing or will implement to routinely remove accumulated solid
material from the air emissions vents and stacks that are used with uncontrolled furnaces; and

16 G. A report that includes the following information:

17 1. Plans and anticipated timelines for installing additional emission
control devices on any furnaces; and

1 2. Plans and anticipated timelines for completing routine
2 maintenance, as may be required, and modifications related to any emissions control devices.

3 23. Bullseye shall not install or modify any emissions control device prior to
4 submitting a notice of intent to construct as required under OAR 340-210-0230 and receiving
5 DEQ's approval as provided by OAR 340-210-240.

6 24. As long as this MAO remains in effect, Bullseye shall provide to DEQ, by
7 Tuesday of each week, a summary of all aggregate metal HAPs, as described in paragraph 19,
8 used in each furnace in the prior week, in total pounds.

9 25. Bullseye may seek authorization to use selenium, manganese, cobalt and nickel in
10 an uncontrolled furnace. Bullseye shall not use lead, arsenic or cadmium in an uncontrolled
11 furnace. Bullseye shall not use chromium in any furnace except as provided in temporary rule
12 OAR 340-244-9000 through 9090. If Bullseye elects to submit a request as specified in this
13 paragraph, DEQ agrees to negotiate in good faith with Bullseye regarding DEQ's review and
14 approval of the request. Bullseye understands that DEQ will share with OHA information
15 provided to DEQ by Bullseye and that DEQ will consult with OHA throughout any such
16 negotiation. The prohibition on the use of every metal HAP in an uncontrolled furnace, set forth
17 in paragraph 19, shall remain in effect unless that prohibition is lifted by agreement with DEQ
18 after consultation with OHA. If DEQ approves a production level limit for use of manganese or
19 nickel in an uncontrolled furnace under this paragraph, such approval shall be effective only until
20 September 1, 2016, the date that the temporary rule prohibition on use of those metals in
21 uncontrolled furnaces becomes effective. In addition, the standards for evaluation of the use of
chromium set forth in the temporary rule shall also remain in effect. The process by which
Bullseye may seek agreement to use cobalt, manganese, nickel and selenium in an uncontrolled
furnace shall be:

- 1 A. Bullseye must submit a written request to DEQ. The request shall include:
- 2 1. A production level limit, in pounds per day, for each of the metal HAPs
Bullseye proposes to use in an uncontrolled furnace;
- 3 2. As to each metal HAP proposed, Bullseye shall have the obligation of
4 establishing that its proposed maximum production level, in the form of a daily usage rate in
5 pounds per day, will result in emissions levels that are protective of human health. Information
6 that Bullseye may use to satisfy such obligation may include, without limitation, the 24-hour
7 screening level and DEQ Ambient Benchmark Concentration for the metal HAP, as approved by
DEQ and OHA. OHA and DEQ may require Bullseye to provide other information in this
8 evaluation; and
- 9 3. Bullseye reserves the right to withdraw or limit a request that it has
submitted under this paragraph, at any time;
- 10 B. DEQ, in consultation and with the confirmation of OHA, shall timely review
Bullseye's request and meet with Bullseye in good faith regarding the proposed daily usage
11 rates;
- 12 C. Bullseye shall provide to DEQ and OHA all data and information available to
Bullseye that either agency requests related to the agencies' evaluation of the proposed
13 maximum production level; DEQ and OHA may perform an independent analysis of this
information; and
- 14 D. Upon written approval by DEQ, Bullseye may use cobalt, manganese, nickel, or
15 selenium in an uncontrolled furnace provided that Bullseye complies with all conditions of use
16 established by DEQ in its approval. Violation of such DEQ-approved limits or conditions will
constitute a violation of this MAO. DEQ's conditions of use may include, without limitation, a
17 provision authorizing DEQ to decrease the approved usage level if DEQ and OHA conclude a

1 reduction is necessary to protect public health based on the results of ongoing air monitoring data
2 from monitors located in proximity to the facility.

26. Bullseye shall also:

3 A. By September 1, 2016, submit a report to DEQ that contains the
4 following:

5 1. A list of all "glass melting furnaces" (as defined in 40 CFR
6 § 63.11459) at the Facility that will be used to produce glass on or after September 1, 2016, that
7 contains compounds of one or more "glass manufacturing metal HAP" (as defined in 40 CFR
8 § 63.11459), as raw materials in a glass manufacturing batch formulation;

9 2. For each glass melting furnace listed pursuant to subparagraph
10 26.A.1, provide the maximum annual production rate of glass in tons per year;

11 3. For each glass melting furnace listed pursuant to subparagraph
12 26.A.1, provide the maximum projected annual production rate of glass that contains one or
13 more glass manufacturing metal HAP in tons per year; and

14 4. For each glass melting furnace listed pursuant to subparagraph
15 26.A.1, indicate whether it is or is not subject to the requirements of 6S based on 40 CFR §
16 63.11449. Nothing herein shall prevent Bullseye from modifying its glass melting furnaces,
17 changing its operations or using additional furnaces to produce glass, which contains one or
18 more of the glass manufacturing metal HAPS as raw materials, at a rate of at least 50 tons per
19 year or more, provided Bullseye complies with the applicable provisions of regulation 6S.

20 B. For each furnace identified pursuant to subparagraph 26.A.4, above,
21 comply with the following:

1. By September 1, 2016, comply with the following sections of 6S
for each glass melting furnace identified:

1 (a) 40 CFR § 63.11451, Standards for New and Existing
2 Sources;

3 (b) 40 CFR § 63.11453, Initial compliance demonstration;
4 requirements for new and existing sources, subsections (a) and (b) for any existing affected
furnace, and subsections (a) and (c), (d) or (e) for any new affected furnaces;

5 (c) 40 CFR § 63.11454, Monitoring requirements for new and
existing sources, as applicable;

6 (d) 40 CFR § 63.11455, Continuous compliance requirements
7 for new and existing sources;

8 (e) Submit an updated initial Notification required under 40
CFR § 63.11456; and

9 (f) 40 CFR § 63.11457, Recordkeeping requirements;

10 2. By February 28, 2017, conduct the performance test for new and
existing sources as required in 40 CFR § 63.11452, and in addition:

11 (a) A performance test plan must be submitted to DEQ at least
12 30 days prior to conducting the test;

13 (b) The performance test plan must be approved by DEQ
before conducting the performance test;

14 (c) After completion of the performance test, submit a Notification
of Compliance Status as required under 40 CFR § 63.11456(b); and

15 (d) A performance test properly conducted under the temporary
16 rules OAR 340-244-9000 through 9090 can be used to satisfy the performance test as required
17 under 40 CFR § 63.11452; and

1 3. By April 12, 2017, submit an application to DEQ for an Oregon
2 Title V Operating Permit.

3 27. If Bullseye violates any provision of this MAO, upon receipt of a written Penalty
4 Demand Notice from DEQ, Bullseye agrees to pay a stipulated penalty of \$2,400 for each day of
5 violation. Such stipulated penalties are in addition to any other remedies available at law or in
6 equity to DEQ or OHA for any violation of this MAO, except that if DEQ issues a Penalty
7 Demand Notice under this MAO it may not also assess civil penalties under Oregon
8 Administrative Rules, Chapter 340, Division 12, for the same acts that constituted the violation
9 of the terms of this MAO. Such stipulated penalties are also in addition to the Governor's
10 authority to direct DEQ to issue a cease and desist order.

11 28. If any event occurs that is beyond Bullseye's reasonable control that causes or
12 may cause a delay or deviation in performance of the requirements of this MAO, Bullseye must
13 promptly notify DEQ verbally of the cause of delay or deviation and its anticipated duration, the
14 measures that have been or will be taken to prevent or minimize the delay or deviation, and the
15 timetable by which Bullseye proposes to carry out such measures. Bullseye must confirm in
16 writing this information within five (5) working days of the onset of the event. It is Bullseye's
17 responsibility in the written notification to demonstrate to DEQ's satisfaction that the delay or
18 deviation has been or will be caused by circumstances beyond the reasonable control and despite
19 due diligence of Bullseye. If Bullseye so demonstrates, DEQ will extend times of performance of
20 related activities under this MAO as appropriate. Circumstances or events beyond Bullseye's
21 control include, but are not limited to, acts of nature, unforeseen strikes, work stoppages, fires,
explosion, riot, sabotage, or war. Increased cost of performance or consultant's failure to provide
timely reports will not be considered circumstances beyond Bullseye's reasonable control.

1 29. Regarding DEQ's conclusion that Bullseye committed the violations set forth in
2 paragraphs 8 through 14, which are expressly settled herein, Bullseye hereby waives any and all
3 of its rights to any and all notices, a contested case hearing, judicial review, and to service of a
4 copy of the final order herein. DEQ reserves the right to enforce this order through appropriate
administrative and judicial proceedings.

5 30. DEQ and Bullseye may amend the terms of this MAO by mutual written
6 agreement.

7 31. Bullseye agrees that this MAO shall be binding on Bullseye and its respective
8 successors, agents, and assigns. The undersigned representative of Bullseye certifies that he or she is
9 fully authorized to execute and bind Bullseye to this MAO. No change in ownership or corporate
or partnership status relating to the Facility will, in any way, alter Bullseye's obligation under
this MAO, unless otherwise approved in writing by DEQ.

10 32. All reports, notices and other communications required under or relating to this
11 MAO should be sent to: Dave Kauth, DEQ Northwest Region Office, 700 NE Multnomah Street,
12 Portland, OR 97232. Alternatively, communications can be directed via email to
kauth.dave@deq.state.or.us. The contact person for Bullseye is Eric Durrin. Alternatively,
communications can be directed via email to ericdurrin@bulseyeglass.com.

13 33. Bullseye acknowledges that it has actual notice of the contents and requirements
14 of this MAO and that failure to fulfill any of the requirements hereof will constitute a violation
of this MAO and will subject Bullseye to payment of civil penalties.

15 34. Any stipulated civil penalty imposed pursuant to paragraph 27 is due upon written
16 demand. Stipulated civil penalties must be paid by check or money order made payable to the
17 "State Treasurer, State of Oregon" and sent to: Business Office, DEQ, 811 SW Sixth Avenue,
Portland, Oregon 97204 (DEQ will notify Bullseye in writing of its change of address for
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1 purposes of this paragraph, which is expected to occur in late 2016, not less than thirty days prior
2 to such change, and Bullseye shall thereafter use that new address). Within twenty (20) days of
3 receipt of a "Demand for Payment of Stipulated Civil Penalty" Notice from DEQ, Bullseye may
4 request a hearing to contest the Demand Notice. At any such hearing, the issue will be limited to
5 Bullseye's compliance or noncompliance with this MAO. The amount of each stipulated civil
6 penalty for each violation and/or day of violation is established in advance by this MAO and will
7 not be a contestable issue.

8 35. DEQ may amend the compliance schedule and conditions in this MAO upon
9 finding that such modification is necessary because of changed circumstances or to protect
10 public health and the environment. DEQ must provide Bullseye a minimum of thirty (30) days
11 written notice prior to issuing an amended order modifying any compliance schedules or
12 conditions. If Bullseye contests the amended order, the applicable procedures for conduct of
13 contested cases in such matters will apply (ORS Chapter 183, OAR Chapter 340, Division 011
14 and OAR 137-003-0501 to 0700).

15 36. Provided all penalties due pursuant to paragraph 27 are paid in full and no DEQ
16 request for information or documents remains pending, this MAO will terminate at the time DEQ
17 issues Bullseye an Oregon Title V Operating Permit.

18 BULLSEYE GLASS CO.

19 6/6/14
20 Date

21 
Signature

DANIEL SCHWOERER
Name (print)

PRES.
Title (print)

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FINAL ORDER

IT IS SO ORDERED:

DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

6/6/16
Date

Leah K. Feldon
Leah K. Feldon, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505