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EDWIN G. WOODWARD
DIANA M. ZOTTMAN ③

① ADMITTED IN ARIZONA
② ADMITTED IN CALIFORNIA
③ ALSO ADMITTED IN ARIZONA
④ ALSO ADMITTED IN CALIFORNIA
⑤ ALSO ADMITTED IN COLORADO
⑥ ALSO ADMITTED IN IDAHO
⑦ ALSO ADMITTED IN ILLINOIS
⑧ ALSO ADMITTED IN MARYLAND
⑨ ALSO ADMITTED IN MICHIGAN
⑩ ALSO ADMITTED IN MONTANA
⑪ ADMITTED IN NEW YORK
⑫ ALSO ADMITTED IN NEW YORK
⑬ ALSO ADMITTED IN OREGON
⑭ ALSO ADMITTED IN OHIO
⑮ ALSO ADMITTED IN TEXAS
⑯ ALSO ADMITTED IN WASHINGTON, D.C.
⑰ ALSO ADMITTED IN WISCONSIN
⑱ NOT ADMITTED IN WASHINGTON

March 17, 2016

Public Comment of Daniel Mensher and Matthew Preusch of Keller Rohrback L.L.P. Regarding Air Quality 2016 Temporary Rules Amending Chapter 340 of the Oregon Administrative Rules

Madame Chair and Members of the Commission:

We represent residents of Southeast Portland in a putative class action lawsuit filed against Bullseye Glass Co. in Multnomah County Circuit Court on March 3, 2016, *Krueger et al. v. Bullseye Glass Co.*, No. 16CV07002. We write to provide comments to the proposed amendments to Oregon Administrative Rules chapter 340, division 244 regarding the regulation of Colored Art Glass Manufacturers (“CAGMs”) like Bullseye.

As an initial matter, we appreciate your decision to allow a limited public comment period regarding those temporary rules.

Our clients support immediate, effective regulation of currently uncontrolled emissions from glass manufacturers like Bullseye that allows those manufacturers to continue to thrive as local employers and institutions, but does so in a way that fully protects the health and property of their neighbors.

In addition to that general statement of support, our clients have three specific requests.

First, the Justification section of the staff report for the proposed temporary rules references agreements DEQ “has or plans to sign . . . with two colored art glass manufacturers[.]” The report suggests that those agreements include promises from those CAGMs that DEQ could enforce. While DEQ made its agreement with Uroboros Glass Studios, Inc. available on March 16, to the extent it has any other agreements, it must make those agreements and other necessary documents available to the public before adopting the temporary rule. *See* ORS 183.335(5)(d) (requiring agency to prepare, before it adopts a temporary rule, a “list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, *and a statement of the location at which those documents are available for public inspection*”) (emphases added). The public

March 17, 2016
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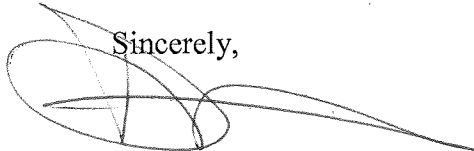
cannot evaluate the necessity of the temporary rule without understanding the terms—as well as the enforceability of those terms—of any private agreements the DEQ has reached or will reach with CAGMs.

Second, the temporary rule does not adequately address nickel emissions. The Statement of Need in the staff report notes that nickel and other toxic metals are added to glass furnaces at CAGMs and that those furnaces “likely emit these metals at levels that can pose an immediate threat to the health of the public nearby.” Despite that finding, the temporary rules do not include any provision that would require emissions controls on furnaces using nickel for at least five months. *See* Proposed OAR 340-244-9030 (noting that CAGM must install emissions control devices on glass-making furnaces using nickel by September 1, 2016). While the public does not know how much nickel Bullseye or other CAGMs use in their processes, the 1996 letter from Bullseye attached as Exhibit 1 to this comment indicates that in 1995 Bullseye used 900 pounds of black and green nickel oxides, and air monitoring near Bullseye in October of last year found elevated levels of nickel. Other parts of the temporary rule require immediate emissions controls for other metals, but nickel is not included. That puts the public at unnecessary risk while DEQ undertakes permanent rulemaking.

Third, as you heard from DEQ staff at the public hearing on March 15, 2016, DEQ is acting on this temporary rule with relatively limited amounts of air and soil sampling data. Our clients ask that DEQ conduct additional soil sampling in residential areas around Bullseye Glass Co. As Rob Davis at *The Oregonian* noted in a recent report, soil testing by that organization “found elevated levels of cadmium to the south of [Bullseye], where the state did not test.” Rob Davis, *The Oregonian*, *Vegetable warning lifted for SE Portland pollution hot spot, but questions linger* (March 9, 2016). We applaud the DEQ’s recent creation of a new website to provide existing testing data and information to the public, but DEQ cannot stop there. Additional testing is needed.

Thank you again for the opportunity to comment on this proposed temporary rule.

Sincerely,



Daniel P. Mensher
dmensher@kellerrohrback.com

Matthew J. Preusch
mpreusch@kellerrohrback.com

Keller Rohrback L.L.P.

MJP:beg

EXHIBIT 1

BAM/FILE



BULLSEYE

GLASS CO.

January 15, 1996

Attention: Johnny Baumgartner
Department of Environmental Quality
2020 S.W. 4th Avenue, #400
Portland, Oregon 97201-5884

3722 SE 21st
Portland OR
9 7 2 0 2

TELEPHONE
503 232*8887

FACSIMILE
503 238*9963

RE: Air Contaminant Discharge Permit No. 26-3135
Reporting Requirements

Dear Mr. Baumgartner;

I have enclosed an original and two copies of the information required in Air Discharge Permit No. 26-3135. We would like to amend our current permit to increase the amount of natural gas we may use. Please let me know the steps necessary to amend our permit. If you have any questions, or need any additional information, please do not hesitate to contact me.

Sincerely,
BULLSEYE GLASS COMPANY

Eric E. Durrin

Eric E. Durrin
Controller

DEPT OF ENVIRONMENTAL QUALITY
RECEIVED

JAN 17 1996

Enclosures

NORTHWEST REGION



A Glassworking
System

**1995 DEQ Annual Report As Required By
Air Contaminant Discharge Permit No. 26-3135
Bullseye Glass Company**

Contact: Eric E. Durrin, Controller

A. Operating parameters:

i. Plant production on a maximum hourly and annual basis

| | |
|-----------------------------|----------------|
| Total Glass Melted: | 2,497,724 Lbs. |
| Maximum Hourly lbs. Melted: | 414.6 Lbs. |

ii. Materials used to produce glass on an annual basis

| <u>FORMERS</u> | <u>LBS.</u> |
|-------------------------|-------------|
| 5-Mole Borax | 194,950 |
| Alumina Hydrate | 0 |
| Aluminum Fluoride | 1,400 |
| Anhydrous Borax | 12,150 |
| Antimony Trioxide | 2,550 |
| Arsenic Trioxide | 2,454 |
| Barium Sulfate | 0 |
| Boric Acid | 105 |
| Calcium Carbonate | 44,250 |
| Cryolite, German | 44,989 |
| Cullet | 4,900 |
| Custer Feldspar | 50 |
| Fluorspar | 45,000 |
| Limestone | 109,300 |
| Lithium Carbonate | 982 |
| Nepheline Syenite | 260,100 |
| Potassium Carbonate | 18,950 |
| Potassium Nitrate | 20 |
| Red Lead | 39,400 |
| Sand (Iota Quartz) | 440,082 |
| Sand (Lane Mt.) | 1,037,420 |
| Sand (Ottawa 295 Mesh) | 300 |
| Sodium Bichromate | 1,850 |
| Sodium Bichromate (Oxy) | 0 |

DEPT. OF ENVIRONMENTAL QUALITY
RECEIVED

JAN 17 1996

| | |
|-----------------------|---------|
| Sodium Carbonate | 377,700 |
| Sodium Nitrate | 49,550 |
| Sodium-Sil-Fluoride | 0 |
| Zinc Oxide (Granular) | 50 |
| Zinc Oxide (Pellets) | 66,200 |

| <u>COLORANTS</u> | <u>LBS.</u> |
|----------------------|------------------|
| Black Copper Oxide | 1,300 |
| Black Nickel Oxide | 100 |
| Black Tin Oxide | 200 |
| Cadmium Sulfide | 2,400 |
| Carb-o-Cite | 360 |
| Cerium Carbonate | 0 |
| Chrome Oxide | 400 |
| Cobalt Carbonate | 1,500 |
| Erbium Oxide | 104 |
| Flowers of Sulfur | 100 |
| Gold | 38 |
| Graphite (Carbon) | 40 |
| Green Nickel Oxide | 800 |
| Iron Chromate | 1,300 |
| Manganese (92%) | 1,525 |
| Manganese Dioxide | 1,300 |
| Neodymium Oxide | 4,590 |
| Potassium Bichromate | 1,170 |
| Red Copper Oxide | 90 |
| Red Iron Oxide | 1,900 |
| Selenium (200 Mesh) | 550 |
| Silver | 1 |
| Silver Nitrate | 73 |
| Stannous Chloride | 1,755 |
| Titanium Oxide | 0 |
| White Tin Oxide | <u>1,600</u> |
| TOTAL | 2,777,948 |

III. Quantities and types of fuel burned on a maximum hourly and an annual basis

- The plant uses Natural Gas/Air Burners
- Total Natural Gas burned = 1,016,922 therms (1therm = 100 cu. ft.)
- Maximum hourly Natural Gas burned = 200 therms

iv. Total operating time of the furnaces (hours/year)

- The furnaces operate to melt glass at 2500°F an average of 5 days per week.
- Furnace melting hours = 251 days x 24 hours/day = 6,024

v. Average furnace operating schedule (hours/day, days/week, weeks/year, hours/year)

- All furnaces are either melting glass or idling at 2250° 24 hours per day, 7 days a week, 52 weeks per year.
- Furnace operating hours = 365 x 24 = 8760

B. A log of all planned and unplanned excess emissions in accordance with OAR 340-21-375.

There were no excess emissions for 1995.

C. Indicate any permanent changes made in the plant process or production which would affect air contaminant emissions. (Indicate when changes were made.)

No changes in plant process were made that would affect emissions.

D. List all major maintenance performed on air pollution equipment.

Routine maintenance was performed on all pollution equipment.

Eric E. Durrin

Eric E. Durrin
Controller

JAN 17 1996

1995 DEQ Annual Report As Required By
Air Contaminant Discharge Permit No. 26-3135
Bullseye Glass Company

NORTHWEST REGION - AIR QUALITY

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