RESPONSE TO COMMENTS
OWENS-BROCKWAY GLASS CONTAINER INC.
TENTATIVE ORDER NO. R4-2025-XXXX
NPDES NO. CA0056464

Comment Letter dated February 21, 2025, from Kyle Martin, Plant Manager, Owens-Brockway Glass Container Inc.

No.	Comment Summary	Response	Action Taken
1	**Owens-Brockway (Discharger) requests a re-evaluation of its Reasonable Potential Analysis (RPA) using recent data**. As referenced on page F-6 of the Fact Sheet, the infrastructure improvements were operational as of September 2023. The completion of these improvements represents a significant physical alteration that changes the nature and quantity of stormwater discharged from the facility. We note that these physical modifications are described in detail within Section 2 of the Fact Sheet. Accordingly, Owens believes these alterations meet the requirements for an exception to the anti-backsliding provisions as provided in Section 402(0)(2) of the Clean Water Act. Since the facility modifications were completed, there has been one discharge event on February 5, 2024. By design, the quality of stormwater from this sample event was significantly improved from prior events during the permit term. Page F-30 of the fact sheet states that data from December 16, 2016, to February 5, 2024, was used for the Reasonable Potential Analysis (RPA); however, only the results from the February	The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) acknowledges that the Discharger has made significant upgrades to address discharges from the Facility, including obtaining an LACSD industrial waste discharge permit to discharge stormwater to the sanitary sewer and installing 170,250 gallons of stormwater storage on site. These improvements were implemented and have been operational since September of 2023. Although Section 402(o)(2)(A) of the Clean Water Act allows for the relaxation of effluent limitations in renewed permits if "material and substantial alterations or additions to the permitted facility occurred after permit issuance", the facility's modifications do not justify the application of less stringent effluent limitations alone at this time. While in some cases it may be appropriate to relax or remove an effluent limitation based on facility modifications, there is insufficient data to determine whether the Facility modifications are sufficient to ensure that the discharge will consistently comply with applicable water quality standards. The commenter points to a single discharge event in February of 2024 to argue stormwater "was significantly improved". However, as the commenter also acknowledges, the discharge monitoring data submitted since the completion of the modifications indicated exceedances of the effluent limitations for selenium, zinc and TCDD equivalents for EFF-001. The discharge also exceeded the effluent limitation for	No action taken.

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	5, 2024, sample and later should be used because this data is representative of Owens' current operations. Owens provided a table summary of the RPA for EFF-001 using monitoring data collected during the February 5, 2024, discharge event. The table shows exceedances of selenium, zinc, and TCDD equivalents. The results of the RPA performed by Owens are significantly different than those in Table F-8 of the tentative permit's Fact Sheet; while Table F-8 requires limits on all the pollutants, in the table provided by Owens, using the February 5, 2024, sample data shows that only zinc, selenium, and TCDD are above applicable water quality criteria. Further, the table above includes California Toxics Rule (CTR) pollutants, but we believe that all pollutants should be re-evaluated - including Technology-Based Effluent Limitations in Table F-6 of the Fact Sheet and the applicable beneficial uses and Water Quality Criteria and Objectives effluent limitation described in Section 4.3.2 of the Fact Sheet. Finally, we acknowledge that the February 5, 2024, sample only contained data from EFF-001 because the area around EFF-002 was flooded and sampling posed a risk to employee safety. Accordingly, no recent sample data is available for EFF-002. If possible, Owens will sample at EFF-002 during the next permit term and requests that	chronic toxicity, Additionally, the discharge was not monitored from EFF-002 due flooding caused hazardous conditions for access and effluent data is not available. Section 1.2 of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy (SIP)) states that when implementing the provisions of the SIP, regional water boards "shall use all available, valid, relevant, representative data and information, as determined by the [Regional Water Board]". The SIP also grants regional water boards latitude in determining what data should be used to evaluate whether a water quality based effluent limitation is needed, stating that "the Regional Water Board] shall have discretion to consider if any data are inappropriate or insufficient for use in implementing this Policy." (SIP, § 1.2) Given the relative recency of the Facility modifications, the Facility's history of non-compliance, and the limited availability of discharge data that post-dates the Facility upgrades, the Los Angeles Water Board staff concluded that that it is appropriate to use all available monitoring data submitted during the permit term of R4-2016-0122 for Discharge Points 001 and 002 to conduct the RPA. Therefore, the RPA conducted using the monitoring data submitted during the permit term of R4-2016-0122, will remain the basis for the effluent limitations in the tentative order. This approach provides the Los Angeles Water Board an additional permit term to evaluate the efficacy of the facility modifications and to ensure consistent compliance with effluent limitations. Additionally, parameters with effluent limitations based on TMDLs do not require a separate RPA. Adopted TMDLs already establish a reasonable potential to exceed applicable water quality criteria and objectives for discharges to the receiving water (see discussion in	

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	the Reasonable Potential Analysis be re-evaluated when data is available.	Attachment F, Section 4.3.2 of the tentative Order). Therefore, effluent limits implementing applicable TMDLs apply to all discharges to the receiving water and are appropriately retained in the Tentative Order. Staff will take into account all available, valid, relevant, representative data and information provided during the next permit term to determine if there is a basis for the removal of select TBELs and WQBELs during the next permit reissuance.	
2	**The Discharger requests a revision of monitoring frequencies for select parameters.** Owens requests a revision of sampling frequency for certain parameters that do not have a recent history of exceedances. We note that Chapter 8.1.3 of the US EPA NPDES Permit Writer's Manual allows the consideration of compliance history and monitoring costs' to be considered when establishing monitoring frequencies, among other criteria. Owens reviewed reported violations going back to Q1 2019 and determined that of the 50 parameters required for monitoring in Table E-2 of the tentative permit, only 16 parameters had an exceedance since 2019. Therefore, we request that for those parameters that have not had an exceedance, the Regional Board consider a reduction in monitoring frequency. For this analysis, Owens recognizes that data collected after September 2023 would be the most representative of the facility's current	The Los Angeles Water Board staff recognizes the efforts taken by the Discharger to address discharges from the Facility. Since the Facility's improvements were completed in September 2023, there has been one discharge event and monitoring data was only collected for Discharge Point 001. Given the efforts implemented by the Discharger to eliminate stormwater discharges, the sampling frequency has been and is expected to be significantly reduced. The sampling frequency of 1/Discharge Event has already proven to be less than 1/Year. However, if there is a year with multiple discharge events, the Los Angeles Water Board has determined that additional monitoring is appropriate to evaluate the efficacy of the Facility modifications and current operation and maintenance activities at the Facility to address exceedances of the discharge that have occurred. Continued monitoring at the frequency of 1/Discharge Event will provide a sufficient dataset to understand the current conditions and any updates may be considered for the next permit term. Nevertheless, the Facility modifications are expected to reduce the frequency of discharges at the Facility, and, as a result, reduce the frequency of monitoring and the associated economic burden of sampling events.	No action taken.

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	operations; however, only data for one sample event at EFF-001 is available (as discussed in Comment #1 above). Therefore, to be conservative we are using data going back to the beginning of 2019. Owens provided a table showing the results of their analysis. If stormwater is discharged and more data is collected during the next permit term, Owens requests that this analysis be further refined.		
3	**The Discharger requests that stormwater discharges be regulated under the General Permit for Stormwater Discharges Associated with Industrial Activities (IGP).** Owens would like to formally request the transfer from its current individual NPDES permit to the general industrial stormwater permit. Prior to 2010, Owens was covered under the IGP and would like to return to doing so. The IGP includes Standard Industrial Classification (SIC) code 3221-Glass Container Manufacturing - and we believe this would be the more appropriate permitting mechanism. While Owens is committed to complying with its individual NPDES permit, others in our industry are regulated under general permits', imparting an advantage to our competitors due to the challenges inherent in complying with our individual NPDES permit compared to the IGP. Some of these challenges include: • Extensive monitoring requirements, including the number of constituents required for analysis and the requirement	The Los Angeles Water Board acknowledges the Discharger's request for coverage under the IGP. However, the Los Angeles Water Board has taken into account all available data and modifications to the Facility and determined that an individual NPDES permit remains appropriate for discharges from the Facility at this time for the following reasons: • The Discharger has not demonstrated the ability to consistently comply with the effluent limitations included in the NPDES permit or with the requirements of the IGP. The Facility modifications have only been in place since September 2023 and there is limited monitoring data available for Discharge Point 001 and no monitoring data available for Discharge Point 002. Additional data is needed to verify efficacy of Facility upgrades as well as consistent implementation of the SWPPP. • The discharge has reasonable potential for pollutants causing water quality impairments in the Los Angeles River. The Clean Water Act (CWA) requires that permits for stormwater discharges associated with industrial activity comply with section 301 of the	No action taken.

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	to sample every discharge event. For example, the annual stormwater analysis costs Owens approximately $6,500. Chronic toxicity testing costs are approximately $4,400 for the required species sensitivity screening, $7,000 for the workplan, and $1,500 per discharge event thereafter. In comparison, Owens reviewed the Stormwater Multiple Application and Report Tracking System (SMARTS) database and found that others operating under SIC Code 3221 were only sampling for total suspended solids, oil and grease, and pH (typically less than $100 per sample event). • Under the IGP Owens would be required to continue sampling for appropriate receiving water limitations because the IGP includes Water Quality-Based Effluent Limitations for the Los Angeles River. This wasn't the case during Owens' prior NPDES permit renewal circa 2016. However, since that time the IGP has implemented new receiving water requirements that would apply to Owens. • Owens has invested in multiple multi-million dollar advanced BMPs to improve the stormwater quality at the facility, meeting or exceeding BAT/BCT standards.	CWA, including the requirement under 301(b)(1)(C) to contain WQBELs for any discharge that the permitting authority determines has the reasonable potential to cause or contribute to a water quality standard excursion (CWA section 402(p)(3)(A)). Further, if the State or EPA has established a total maximum daily load (TMDL) for an impaired water body that includes waste load allocations (WLAs) for stormwater discharges, permits for either industrial stormwater discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. (40 CFR part 122.44(d)(l)(vii)(B)). The Facility discharges into Los Angeles River Reach 2 and the 2024 State Water Board California 303 (d) lists classified the Los Angeles River Reach 2 as impaired. The Los Angeles River Metals TMDL (Resolution No. R15-004) was adopted which establishes WLAs in Los Angeles River Reach 2 for cadmium, copper, lead, and zinc in dry and wet weather events. Since the pollutants are addressed in the TMDL which assigned waste load allocations (WLAs), an RPA is not contemplated as per the SIP, and effluent limitations have been developed based on the WLAs. However, data collected during discharge events from the facility demonstrated reasonable potential for pollutants not addressed in a TMDL including antimony, arsenic, chronic toxicity, selenium, thallium, TCDD Equivalents, pentachlorophenol, and Bis(2-ethylhexyl) phthalate. Therefore, WQBELs are prescribed in the NPDES permit for these pollutants not already addressed in the TMDL to comply with the water quality standards and to protect the beneficial uses of the receiving	

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		water, the Los Angeles River. This includes exceedances of chronic toxicity, selenium, zinc and TCDD Equivalents that occurred during the most recent discharge event on February 5, 2024. • This Discharger has a history of noncompliance for stormwater discharges. The Discharger made modifications to the Facility beginning in 2015 and completing in September 2023 to address noncompliance. The discharge has continued to demonstrate reasonable potential throughout this time period and there is not sufficient data to demonstrate that the discharge will comply with the effluent limitations in the NDPES permit since the modifications have come into effect.	
4	**The Basis for reduction in the selenium effluent limitation is unclear.** The previous NPDES permit (Order R4-2016-0122) contained an effluent limitation for selenium of 8.2 ug/L. In footnote 8 to Table F-11, the basis for this limitation is described as "effluent limitations are based on the CTR and SIP procedures." In the tentative NPDES permit, the selenium limitation has been reduced to 5.09 ug/L, and the fact sheet does not appear to clearly describe the basis for doing so. We note that in Section 3.3.7 of the Fact Sheet, it states that "On December 10, 2024, the EPA Administrator signed a final rule to revise the current federal CWA freshwater selenium water quality criterion applicable to certain waters of California, including the Los Angeles River Reach 2. These rules contain	On December 10, 2024, the EPA Administrator signed a final rule to revise the current federal Clean Water Act, California Toxics Rule (CTR), water quality criterion for freshwater selenium applicable to certain waters of California. This rule identified a revised water column criteria for lotic aquatic systems, such as the Los Angeles River, of 3.1 µg/L. Utilizing the RPA methodology and WQBEL calculation, procedures as described in Attachment F, Section 4.3.4., the tentative Order establishes only the maximum daily effluent limitation (MDEL) because the discharge is associated with stormwater runoff. The applicable effluent concentration allowance (ECA) using the steady state equation for selenium is: ECA = C; Where C = The priority pollutant criterion/objective, Therefore for selenium, the following is applied: ECA_{acute} = 20 µg/L $ECA_{chronic}$ = 3.1 µg/L	The revised tentative reflects the change.

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<tr><td></td><td>federal water quality criteria for priority pollutants. This Order implements the NTR and CTR". In addition, Table F-10 states that the Basis for Limit for selenium is the CTR. However, in reviewing the EPA final rule referenced above and the Fact Sheet, it remains unclear how the 5.09 ug/L limitation was calculated and derived.

Please provide more detail regarding the basis, including assumptions and calculation methods, detailing how the reduced selenium effluent limitation was derived.</td><td>For each ECA based or aquatic life criterion/objective, determine the long-term average discharge condition (LTA) by multiplying the ECA by a factor (multiplier). The multiplier is a statistically based factor that adjusts the ECA to account for effluent variability. The value of the multiplier varies depending on the coefficient of variation (CV) of the data set and whether it is an acute or chronic criterion/objective.

For selenium, the following data were used to develop the acute and chronic:

<table>
<tr><th>Location</th><th>Samples</th><th>CV</th><th>ECA Multiplier$_{acute}$</th><th>ECA Multiplier$_{chronic}$</th></tr>
<tr><td>001</td><td>28</td><td>1.12</td><td>0.18</td><td>0.34</td></tr>
<tr><td>002</td><td>13</td><td>0.62</td><td>0.31</td><td>0.52</td></tr>
</table>
Discharge Point 001:

LTA_{acute} = 20 µg/L x 0.18 = 3.6 µg/L
$LTA_{chronic}$ = 3.1 µg/L x 0.34 = 1.05 µg/L

Discharge Point 002:

LTA_{acute} = 20 µg/L x 0.31 = 6.2 µg/L
$LTA_{chronic}$ = 3.1 µg/L x 0.52 = 1.61 µg/L

The most limiting (lowest) LTA is used (i.e. $LTA_{chronic}$ for selenium) to calculate the WQBELs utilizing the LTA by a factor (multiplier). The value of the multiplier varies depending on the probability basis, the CV of the data set, the number of samples.

For selenium, the following data were used to develop the MDEL for aquatic life:

<table>
<tr><th>Location</th><th>No. of Samples per Month</th><th>CV</th><th>Multiplier MDEL99</th></tr>
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<tr><td>001</td><td>4</td><td>1.12</td><td>5.41</td></tr>
<tr><td>002</td><td>4</td><td>0.62</td><td>3.20</td></tr>
</table>
Discharge Point 001:
$MDEL_{aquatic\ life}$ = 1.05 µg/L x 5.41 = 5.68 µg/L
Discharge Point 002:
$MDEL_{aquatic\ life}$ = 1.61 µg/L x 3.20 = 5.15 µg/L
The selenium MDELs for Discharge Point 001 and 002 are revised based on the above calculation. The tentative order contained a limit of 5.09 µg/L for Discharge Point 001 and 002 because the RPA used a CV of 0.6. However, a CV of 0.6 is used when the data set is less than 10 samples, or at least 80% of the samples in the data set are reported as non-detect. The calculation has been revised as noted above per SIP procedures, and the revised tentative is updated to reflect the corrected effluent limitation for Discharge Points 001 and 002.</td><td></td></tr>
<tr><td>5</td><td>Footnote “h” applied to TCDD in Table 4 requires clarification. In Table 4, footnote "h" is applied to the EFF-001 TCDD maximum daily concentration limit, which states that this limit is a benchmark. This footnote is not applied to EFF-002 TCDD limit in Table 5. Please clarify or revise this footnote as necessary.</td><td>The reference of footnote h in Table 4 for TCDD is an error. Footnote “h” is a note for the mercury. Footnote “h” is removed from the “Notes” column of Table 4 for TCDD in the tentative Order.</td><td>The revised tentative reflects the change.</td></tr>
<tr><td>6</td><td>Discharge monitoring report (DMR) reporting requirement in Section 10.3, Attachment E is not applicable. Section 10.3 of Attachment E requires submittal of a Discharge Monitoring Report. However, Owens is a "minor" facility and should not be subject to DMR reporting. This was recognized in the previous Order R4-2016-</td><td>On October 22, 2015, the EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (NPDES eRule). This rule revised Clean Water Act (CWA) reporting for industrial facilities from paper-based to electronic reporting including the submission of Discharge Monitoring Reports (DMRs). The Phase 1 deadline for compliance was December 21, 2016, and required DMR submittal for major facilities. The deadline for</td><td>No action taken.</td></tr>
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	0122, which stated the following in Attachment E: "As of the effective date of this Order, if the Discharger operates a "minor" facility as designated on page 1 of this Order, submittal of Discharge Monitoring Reports (DMRs) is not required. However, at any time during the term of this Order, the State Water Board or the Regional Water Board may notify and require the Discharger to electronically submit DMRs." Owens requests that this language be reinstated into the tentative NPDES permit and the DMR requirement be removed.	Phase 2 was extended from December 21, 2020, to December 21, 2025, on September 23, 2020. Phase 2 requires all NPDES permit holders to submit DMRs, including minor NPDES permittees. The tentative Order will be adopted after the deadline for Phase 2 comes into effect, therefore DMR reporting is required for this facility.	