



**PACIFIC ENVIRONMENTAL ADVOCACY CENTER**

10015 S.W. Terwilliger Boulevard

Portland, Oregon 97219

phone: 503-768-6727 fax: 503-768-6642

December 15, 2004

Via certified mail, return receipt requested

David T. Brown  
President and Chief Executive Officer  
Owens Corning Corporation  
One Owens Corning Parkway 3G  
Toledo, OH 43659

CT Corporation  
Registered Agent  
388 State St., Suite 420  
Salem, OR 97301

Re: Sixty-day notice of violations of Clean Air Act

Dear Sirs:

I am writing to inform you that the Northwest Environmental Defense Center (“NEDC”), Oregon Center for Environmental Health (“OCEH”) and Sierra Club (collectively, “Notifiers”) intend to file suit against Owens Corning Corporation (“Owens Corning”) under Section 304(a)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a)(1), for violating Oregon’s State Implementation Plan (“SIP”) and the CAA by constructing a stationary source at 18456 NE Wilkes Road, Portland, Oregon 97230, without obtaining a pre-construction permit required under Oregon’s SIP and the CAA and without otherwise complying with Oregon’s SIP. Notifiers intend to file suit against Owens Corning in federal district court on or about the sixtieth day following delivery of this letter and plan to seek declaratory and injunctive relief, as well as civil penalties in the amount of \$32,500 per violation per day for every day in which Owens Corning has violated Oregon’s SIP and the CAA. The violations alleged in this notice are in addition to the violations for which Notifiers have already brought suit against Owens Corning under CAA § 304(a)(3), 42 U.S.C. § 7604(3).

### **Overview of the Citizen Suit Provision**

CAA § 304(a)(1) authorizes citizens to commence a civil action against any person who is alleged to have violated or to be in violation of an emission standard or limitation under the CAA. 42 U.S.C. § 7604(a)(1). An emission standard or limitation is defined to include “any condition or requirement of a permit under part C of subchapter I of this chapter,” CAA § 304(f)(3), 42 U.S.C. § 7604(f)(3), and “any other standard, limitation, or schedule established . . .

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under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations . . . which is in effect under this chapter or any applicable implementation plan.” CAA § 304(f)(4), 42 U.S.C. § 7604(f)(4). Thus, citizens may bring suit against any person, including any corporation, that violates relevant conditions of a state’s SIP.

### **Owens Corning’s Construction Of Its Facility Violates Oregon’s SIP**

Owens Corning is constructing an air contaminant source at 18456 NE Wilkes Road, Portland, OR 97230, in violation of Oregon’s SIP. Notifiers intend, at the end of the sixty-day notice period, to bring claims alleging violations of each of the following provisions. Notifiers also intend to seek civil penalties of up to \$32,500 per violation per day.

Oregon’s SIP expressly states that “No person may construct, install, establish, develop or operate any air contaminant source which is referred to in Table 1 without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Department or Regional Authority.” OAR 340-216-0020(1). Table 1 requires all facilities that will emit more than 100 tons per year of a regulated air pollutant, to obtain a permit before constructing. OAR 340-216-0020, Table 1, Part C.5. Owens Corning is in violation of this provision of the SIP.

Oregon’s SIP further states that “No person may construct, install, establish or develop any source that will be subject to the Oregon Title V Operating Permit program without first obtaining an ACDP from the Department or Regional Authority.” OAR 340-216-0020(2). Owens Corning’s facility will be subject to the Oregon Title V Operating Permit because it is a “major source.” *See* OAR 340-218-0020(1)(a) (Title V applies to “any major source.”); OAR 340-200-0020(67)(b)(B) (major source means any stationary source of air pollutants “that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant”). Owens Corning is in violation of this provision of the SIP.

Oregon’s SIP also states, “No person is allowed to construct, install, or establish a new stationary source that will cause an increase in any regulated pollutant emissions without first notifying the Department in writing.” OAR 340-210-0215. Owens Corning did not notify DEQ in writing of its construction and is in violation of this provision of the SIP.

Oregon’s SIP also includes pre-construction notification and approval requirements. For Type 3 changes, “the owner or operator must obtain either a Construction ACDP or a new or modified Standard ACDP . . . before proceeding with the construction or modification.” OAR 340-210-0240(1)(c). For Type 4 changes, “the owner or operator must obtain a new or modified Standard ACDP before proceeding with the construction or modification.” OAR 340-210-0240(1)(d). Owens Corning is in violation of these provisions.

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Last, Oregon's SIP states that "No owner or operator may begin construction of a major source or major modification of an air contaminant source without having received an air contaminant discharge permit (ACDP) from the Department and having satisfied the requirements of this division." OAR 340-224-0100. Owens Corning is in violation of this prohibition.

### **Dates of Violation**

Upon information and belief, Notifiers allege that Owens Corning commenced construction on the facility at 18456 NE Wilkes Road, Portland, Oregon 97230, on or after August 11, 2004. Owens Corning is in the best position to know when it began construction at the site, and Notifiers intend to seek this information during discovery. Notifiers also intend to seek civil penalties of \$32,500 per violation for each day on which Owens Corning and its contractors performed actual construction or allowed the constructed facility to remain in place without the appropriate pre-construction permits.

Upon information and belief, Notifiers also alleged that Owens Corning failed to notify DEQ, as required under Oregon's SIP, of its construction. This failure to provide proper notification commenced on or about the date on which Owens Corning commenced construction. Owens Corning is in the best position to know when it began construction at the Wilkes Road site, and Notifiers intend to seek this information during discovery. Notifiers also intend to seek civil penalties of \$32,500 per violation for each day that Owens Corning failed to provide proper notice of its construction.

### **Persons Giving Notice**

The full names, addresses, and telephone numbers of the parties providing this notice are:

Northwest Environmental Defense Center  
10015 S.W. Terwilliger Blvd.  
Portland, OR 97219  
(503) 768-6673

Oregon Center for Environmental Health  
516 SE Morrison Street  
Portland, OR 97214  
(503) 233-1510

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Sierra Club  
2950 SE Stark, Suite 110  
Portland, OR 97214  
503-238-0442

The attorney representing the parties in this notice is:

Melissa Powers  
Pacific Environmental Advocacy Center  
10015 S.W. Terwilliger Blvd.  
Portland, OR 97219  
(503)768-6727

During the sixty (60) day notice period, NEDC will be available to discuss the contents of this notice. If you wish to discuss any aspect of this notice or to discuss settlement of this matter prior to commencement of suit, please contact us.

Sincerely,

/s/ Melissa Powers  
Melissa Powers  
Pacific Environmental Advocacy Center

COPIES TO:

Tom Lindley  
Perkins Coie, LLP  
1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209-4128

(by certified mail)  
Stephanie Hallock, Director  
Oregon Department of Environmental Quality  
811 SW Sixth Ave.  
Portland, OR 97204

Paul S. Lewandowski  
Owens Corning Corporation  
One Owens Corning Parkway 3G  
Toledo, OH 43659

(by certified mail)  
Andy Ginsburg  
Air Quality Division Administrator  
Oregon Department of Environmental Quality  
811 SW Sixth Ave.  
Portland, OR 97204

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Audrey O'Brien  
Oregon Department of Environmental Quality  
Northwest Region  
2020 SW 4th Avenue, Suite 400  
Portland, OR 97201

Ron Kreizenbeck  
Acting Regional Administrator  
Region X of the United States Environmental  
Protection Agency  
1200 Sixth Avenue (RA-140)  
Seattle, WA 98101

John Ashcroft, Attorney General  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530-0001

Governor Ted Kulongoski  
Office of the Governor  
State Capitol, Room 160  
900 Court Street NE  
Salem, OR 97301-4047

(by certified mail)  
Mike Leavitt  
United States Environmental Protection  
Agency  
401 M Street SW  
Washington, D.C. 20460