

**Executive Summary – Enforcement Matter – Case No. 60604**  
**Ball Metal Beverage Container Corp.**  
**RN100225440**  
**Docket No. 2021-0474-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Metal Beverage Container Operations, 6600 Will Rogers Boulevard, Fort Worth, Tarrant County

**Type of Operation:**

Beverage can manufacturing plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** March 31, 2023

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$7,750

**Amount Deferred for Expedited Settlement:** \$1,550

**Total Paid to General Revenue:** \$6,200

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** January 2021

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** March 12, 2021

**Date(s) of NOE(s):** March 22, 2021

**Executive Summary – Enforcement Matter – Case No. 60604**  
**Ball Metal Beverage Container Corp.**  
**RN100225440**  
**Docket No. 2021-0474-AIR-E**

***Violation Information***

1. Failed to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event. Specifically, the initial notification for Incident No. 347854 was due by November 29, 2020 at 7:00 p.m. but was not submitted until December 18, 2020 at 2:09 p.m. [30 TEX. ADMIN. CODE §§ 101.201(a)(1)(B) and 122.143(4), Federal Operating Permit ("FOP") No. O3457, General Terms and Conditions ("GTC") and Special Terms and Conditions ("STC") No. 2.F, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

2. Failed to prevent unauthorized emissions. Specifically, the Respondent released 1,213.6 pounds ("lbs") of volatile organic compounds, 0.9 lb of particulate matter, 0.1 lb of sulfur dioxide, 10.4 lbs of carbon monoxide, and 12.4 lbs of nitrogen oxides from Regenerative Thermal Oxidizer ("RTO") 2, Emissions Point Number S21B, during an emissions event (Incident No. 347854) that began on November 28, 2020 and lasted 26 hours. The emissions event occurred when a compressed air fault caused RTO 2 to shut down, resulting in the release to the atmosphere. Since the Respondent did not comply with the emissions event reporting requirements and the emissions event was not caused by a sudden unavoidable breakdown of equipment or process beyond the control of the owner or operator and could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222 [30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), New Source Review Permit Nos. 146824 and N130M1, Special Conditions No. 1, FOP No. O3457, GTC and STC No. 8, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent implemented the following corrective measures:

- a. On December 18, 2020, submitted the initial notification for Incident No. 347854; and
- b. By January 22, 2021, identified and adjusted the Pressure Switch Low setting for RTO 2 to the manufacturer's recommended setting of 65 parts per square inch in order to prevent the recurrence of emissions events due to the same or similar causes as Incident No. 347854.

**Technical Requirements:**

N/A

**Executive Summary – Enforcement Matter – Case No. 60604**  
**Ball Metal Beverage Container Corp.**  
**RN100225440**  
**Docket No. 2021-0474-AIR-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Johnnie Wu, Enforcement Division, Enforcement Team 2, MC 219, (512) 239-2524; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** Joseph Bodisch, Plant Manager, Ball Metal Beverage Container Corp., 6600 Will Rogers Boulevard, Fort Worth, Texas 76140-6006

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	30-Mar-2021			
	<b>PCW</b>	18-Jan-2023	<b>Screening</b>	6-Apr-2021	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Ball Metal Beverage Container Corp.				
<b>Reg. Ent. Ref. No.</b>	RN100225440				
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Major		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	60604	<b>No. of Violations</b>	2		
<b>Docket No.</b>	2021-0474-AIR-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Johnnie Wu		
		<b>EC's Team</b>	Enforcement Team 2		
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,750</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	<b>25.0%</b>	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$1,937</b>
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Notes: Enhancement for one NOV with same/similar violations and one order containing a denial of liability.

<b>Culpability</b>	No	<b>0.0%</b>	Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>-\$1,937</b>
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<b>Economic Benefit</b>	<b>0.0%</b>	Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$76  
 Estimated Cost of Compliance: \$10,250  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$7,750</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b>	Adjustment	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$7,750</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$7,750</b>
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<b>DEFERRAL</b>	<b>20.0%</b>	Reduction	<b>Adjustment</b>	<b>-\$1,550</b>
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$6,200</b>
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**Screening Date** 6-Apr-2021

**Docket No.** 2021-0474-AIR-E

**PCW**

**Respondent** Ball Metal Beverage Container Corp.

*Policy Revision 5 (January 28, 2021)*

**Case ID No.** 60604

*PCW Revision February 11, 2021*

**Reg. Ent. Reference No.** RN100225440

**Media** Air

**Enf. Coordinator** Johnnie Wu

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 25%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Satisfactory Performer

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with same/similar violations and one order containing a denial of liability.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 25%

**Screening Date** 6-Apr-2021 **Docket No.** 2021-0474-AIR-E **PCW**  
**Respondent** Ball Metal Beverage Container Corp. *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 60604 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN100225440  
**Media** Air  
**Enf. Coordinator** Johnnie Wu

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code §§ 101.201(a)(1)(B) and 122.143(4), Federal Operating Permit ("FOP") No. O3457, General Terms and Conditions ("GTC") and Special Terms and Conditions ("STC") No. 2.F, and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event. Specifically, the initial notification for Incident No. 347854 was due by November 29, 2020 at 7:00 p.m., but was not submitted until December 18, 2020 at 2:09 p.m.

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text" value="1.0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events  Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	<input type="text"/>

**Notes** The Respondent completed the corrective measures on December 18, 2020, prior to the Notice of Enforcement ("NOE") dated March 22, 2021.

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Ball Metal Beverage Container Corp.  
**Case ID No.** 60604  
**Reg. Ent. Reference No.** RN100225440  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	29-Nov-2020	18-Dec-2020	0.05	\$1	n/a	\$1

#### Notes for DELAYED costs

Estimated cost to submit the initial notification for Incident No. 347854. The Date Required is the date the initial notification was due and the Final Date is the date of compliance.

### Avoided Costs

#### ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

**TOTAL**

\$1

**Screening Date** 6-Apr-2021 **Docket No.** 2021-0474-AIR-E **PCW**  
**Respondent** Ball Metal Beverage Container Corp. *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 60604 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN100225440  
**Media** Air  
**Enf. Coordinator** Johnnie Wu

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), New Source Review Permit Nos. 146824 and N130M1, Special Conditions No. 1, FOP No. O3457, GTC and STC No. 8, and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to prevent unauthorized emissions. Specifically, the Respondent released 1,213.6 pounds ("lbs") of volatile organic compounds, 0.9 lb of particulate matter, 0.1 lb of sulfur dioxide, 10.4 lbs of carbon monoxide, and 12.4 lbs of nitrogen oxides from Regenerative Thermal Oxidizer ("RTO") 2, Emissions Point Number S21B, during an emissions event (Incident No. 347854) that began on November 28, 2020 and lasted 26 hours. The emissions event occurred when a compressed air fault caused RTO 2 to shut down, resulting in the release to the atmosphere. Since the Respondent did not comply with the emissions event reporting requirements and the emissions event was not caused by a sudden unavoidable breakdown of equipment or process beyond the control of the owner or operator and could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 Tex. Admin. Code § 101.222.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>			<b>Percent</b> 30.0%
	<b>Release</b>	Major	Moderate	
	Actual			X
	Potential			

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	<b>Percent</b> 0.0%

**Matrix Notes** Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$17,500

\$7,500

**Violation Events**

Number of Violation Events 1 2 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$7,500

One monthly event is recommended.

**Good Faith Efforts to Comply** 25.0% Reduction \$1,875

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		

**Notes** The Respondent completed the corrective measures by January 22, 2021, prior to the NOE dated March 22, 2021.

**Violation Subtotal** \$5,625

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$75 **Violation Final Penalty Total** \$7,500

**This violation Final Assessed Penalty (adjusted for limits)** \$7,500



## Economic Benefit Worksheet

**Respondent** Ball Metal Beverage Container Corp.  
**Case ID No.** 60604  
**Reg. Ent. Reference No.** RN100225440  
**Media** Air  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	28-Nov-2020	22-Jan-2021	0.15	\$75	n/a	\$75

#### Notes for DELAYED costs

Estimated cost to identify and adjust the Pressure Switch Low setting for RTO 2 to the manufacturer's recommended setting of 65 parts per square inch in order to prevent the recurrence of emissions events due to the same or similar causes as Incident No. 347854. The Date Required is the date the emissions event began and the Final Date is the date of compliance.

### Avoided Costs

#### ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$75



# Compliance History Report

Compliance History Report for CN600132062, RN100225440, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

**Customer, Respondent, or Owner/Operator:** CN600132062, Ball Metal Beverage Container Corp. **Classification:** SATISFACTORY **Rating:** 4.40  
**Regulated Entity:** RN100225440, METAL BEVERAGE CONTAINER OPERATIONS **Classification:** SATISFACTORY **Rating:** 3.82  
**Complexity Points:** 18 **Repeat Violator:** NO  
**CH Group:** 14 - Other  
**Location:** 6600 Will Rogers Boulevard, Fort Worth, Tarrant County, Texas  
**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):**

<b>AIR OPERATING PERMITS</b> ACCOUNT NUMBER TA0236L	<b>AIR OPERATING PERMITS</b> PERMIT 3457
<b>AIR NEW SOURCE PERMITS</b> ACCOUNT NUMBER TA0236L	<b>AIR NEW SOURCE PERMITS</b> AFS NUM 4843900095
<b>AIR NEW SOURCE PERMITS</b> EPA PERMIT N130	<b>AIR NEW SOURCE PERMITS</b> PERMIT 146824
<b>AIR NEW SOURCE PERMITS</b> REGISTRATION 160062	<b>AIR NEW SOURCE PERMITS</b> EPA PERMIT N130M1
<b>VOLUNTARY CLEANUP PROGRAM</b> ID NUMBER 260	<b>STORMWATER</b> PERMIT TXRNEP879
<b>AIR EMISSIONS INVENTORY</b> ACCOUNT NUMBER TA0236L	<b>POLLUTION PREVENTION PLANNING</b> ID NUMBER P00574
<b>INDUSTRIAL AND HAZARDOUS WASTE</b> EPA ID TXD070805932	<b>INDUSTRIAL AND HAZARDOUS WASTE</b> SOLID WASTE REGISTRATION # (SWR) 31928
<b>TAX RELIEF</b> ID NUMBER 16326	<b>TAX RELIEF</b> ID NUMBER 16227

**Compliance History Period:** September 01, 2017 to August 31, 2022 **Rating Year:** 2022 **Rating Date:** 09/01/2022

**Date Compliance History Report Prepared:** December 20, 2022

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** December 20, 2017 to December 20, 2022

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Johnnie Wu

**Phone:** (512) 239-2524

**Site and Owner/Operator History:**

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

**Components (Multimedia) for the Site Are Listed in Sections A - J**

**A. Final Orders, court judgments, and consent decrees:**

1 Effective Date: 06/18/2019 ADMINORDER 2018-0585-AIR-E (1660 Order-Agreed Order With Denial)

Classification: Major  
Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)  
30 TAC Chapter 116, SubChapter D 116.315(a)  
5C THSC Chapter 382 382.0518(a)  
5C THSC Chapter 382 382.085(b)

Description: Failed to submit an application for renewal at least six months prior to the expiration of a permit. Specifically, the Respondent did not submit a renewal application for NSR Permit No. 3290 by August 23, 2013, the permit expired on February 23, 2014, and the Respondent continued to operate the Plant without authorization.

Classification: Moderate  
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)  
30 TAC Chapter 122, SubChapter B 122.145(2)(A)  
5C THSC Chapter 382 382.085(b)

Rqmt Prov: FOP O3457, General Terms and Conditions OP

Description: Failed to report all instances of deviations. Specifically, the deviation reports for the February 28, 2014

through August 28, 2014, August 29, 2014 through February 28, 2015, February 28, 2015 through August 28, 2015, and August 29, 2015 through February 28, 2016 reporting periods did not contain the deviation for failing to submit a permit renewal application for NSR Permit No. 3290.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	August 05, 2019	(1581339)
Item 2	December 20, 2019	(1617008)
Item 3	April 19, 2021	(1703232)

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1	Date:	05/25/2022	(1817262)		
	Self Report?	NO		Classification:	Major
	Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 5C THSC Chapter 382 382.085(b)			
	Description:	Failure to route organic compound emissions to the associated Regenerative Thermal Oxidizer (RTO) as required by Special Condition (SC) #10D of NSR Permit #3290 and NSR 146824 SC #8D			

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BALL METAL BEVERAGE CONTAINER  
CORP.  
RN100225440**

**§  
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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2021-0474-AIR-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ball Metal Beverage Container Corp. (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a beverage can manufacturing plant located at 6600 Will Rogers Boulevard in Fort Worth, Tarrant County, Texas (the "Plant"). The Plant consists or consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$7,750 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$6,200 of the penalty and \$1,550 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Plant:
  - a. On December 18, 2020, submitted the initial notification for Incident No. 347854.
  - b. By January 22, 2021, identified and adjusted the Pressure Switch Low setting for Regenerative Thermal Oxidizer ("RTO") 2 to the manufacturer's recommended setting of 65 parts per square inch in order to prevent the recurrence of emissions events due to the same or similar causes as Incident No. 347854.

## II. ALLEGATIONS

During a record review for the Plant conducted on March 12, 2021, an investigator documented that the Respondent:

1. Failed to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event, in violation of 30 TEX. ADMIN. CODE §§ 101.201(a)(1)(B) and 122.143(4), Federal Operating Permit ("FOP") No. O3457, General Terms and Conditions ("GTC") and Special Terms and Conditions ("STC") No. 2.F, and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the initial notification for Incident No. 347854 was due by November 29, 2020 at 7:00 p.m., but was not submitted until December 18, 2020 at 2:09 p.m.
2. Failed to prevent unauthorized emissions, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), New Source Review Permit Nos. 146824 and N130M1, Special Conditions No. 1, FOP No. O3457, GTC and STC No. 8, and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent released 1,213.6 pounds ("lbs") of volatile organic compounds, 0.9 lb of particulate matter, 0.1 lb of sulfur dioxide, 10.4 lbs of carbon monoxide, and 12.4 lbs of nitrogen oxides from RTO 2, Emissions Point Number S21B, during an emissions event (Incident No. 347854) that began on November 28, 2020 and lasted 26 hours. The emissions event occurred when a compressed air fault caused RTO 2 to shut down, resulting in the release to the atmosphere. Since the Respondent did not comply with the emissions event reporting requirements and the emissions event was not caused by a sudden unavoidable breakdown of equipment or process beyond the control of the owner or operator and could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ball Metal Beverage Container Corp., Docket No. 2021-0474-AIR-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Plant operations referenced in this Order.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting,

lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.


7. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

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Date

  
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4/17/2023  
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For the Executive Director

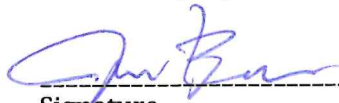
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the OAG for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the OAG of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
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Signature

2/20/23  
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Date

Joseph Bodasli  
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Name (Printed or typed)  
Authorized Representative of  
Ball Metal Beverage Container Corp.

Plant Manager  
-----  
Title

*If mailing address has changed, please check this box and provide the new address below:*

**Instructions:** Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.