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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

BULLSEYE GLASS CO., an Oregon Corporation Plaintiff, vs. KATE BROWN, in her capacity as Governor of Oregon, RICHARD WHITMAN, in his capacity as Director, Oregon Department of Environmental Quality, PATRICK ALLEN, in his capacity as Director, Oregon Health Authority, MULTNOMAH COUNTY HEALTH DEPARTMENT, State Officials Jane Doe and State Officials John Doe, Defendants.	CASE NO. 3:17-CV-01970-JR **AMENDED COMPLAINT** VIOLATION OF AND CONSIPRACY TO VIOLATE CIVIL RIGHTS, 42 U.S.C. §1983; DECLARATORY AND INJUNCTIVE RELIEF, 28 U.S.C. §§2201 AND 2202 Demand for Jury Trial

PARTIES

1. Plaintiff Bullseye Glass is an Oregon Corporation founded in 1974. Its headquarters and manufacturing facility have always been in Southeast Portland. Bullseye manufactures colored glass for art and architecture and distributes that glass throughout the world.

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2. This action is taken against Defendants GOVERNOR KATE BROWN, in her capacity as Governor of Oregon, RICHARD WHITMAN, in his capacity as Director, Oregon Department of Environmental Quality (DEQ), PATRICK ALLEN, in his capacity as Director, Oregon Health Authority (OHA), the MULTNOMAH COUNTY HEALTH DEPARTMENT (MCHD), and State Officials Jane Doe and State Officials John Doe, in their representative capacities.

3. Bullseye Glass alleges that Defendants, acting under color of law, deprived and conspired to deprive Bullseye of its rights and privileges secured by the Constitution and laws of the United States. In addition, Bullseye asks the court to declare that the Defendants' assertion of regulatory authority over Bullseye under 40 CFR 63.1148 (Subpart SSSSSS) was unlawful. Bullseye seeks injunctive relief to prevent Defendants from continuing their civil rights violations, damages in the amount of $30 million, and attorneys' fees.

4. In late 2015 and early 2016, Defendants leaked false and misleading information to the news media about possible air emissions from Bullseye's manufacturing process. Those leaks triggered a storm of public concern and criticism of Defendants' failure to protect Oregon's air. In response, Defendants initiated an ongoing scheme to create an artificial public health crisis so they could falsely portray Bullseye as a dangerous, deliberate polluter and divert attention from their multi-decade failure to regulate Oregon industry. They systematically lied and continue to lie to the public about Bullseye and the potential health impact of its alleged emissions. Based on those lies, Defendants began an ongoing series of unlawful and arbitrary enforcement and administrative actions designed to (1) further their false portrayal of Bullseye as the source of an artificially-created health crisis and (2) restore and enhance their own reputations at Bullseye's expense.

5. These unconstitutional actions damaged the goodwill, good name, and respected brand that Bullseye's owners have spent a lifetime building. Angry neighbors have demonstrated at and vandalized the facility. Bullseye and its owners and employees are routinely wrongly accused of poisoning the neighborhood and children. Bullseye's business has suffered financially and in its broader purpose; its distributors and educational programs have been driven out of

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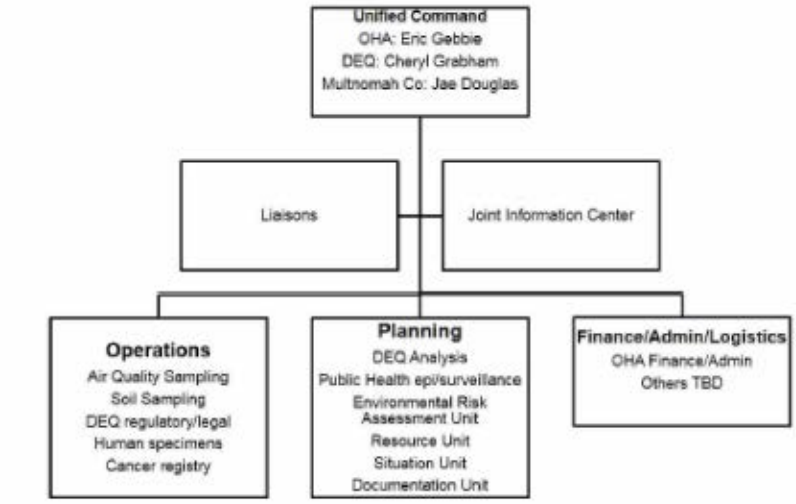
business. And Bullseye's owners and supporters have received threats of death and violent attack.

6. Defendants pursued the goals of creating an artificial health crisis and simultaneously falsely castigating Bullseye as the source of the phony crisis by acting in concert and by setting up an Incident Management Team (IMT) to share information and decision-making authority. DEQ and OHA reported to and took direction from the Governor. By February 12, 2016, at the request of MCHD officials, the Defendants agreed to operate the IMT under a "Unified Command" that provided equal decision-making authority to officials from OHA, DEQ, and MCHD, as set forth in their organizational chart:



7. As set forth in more detail below, the actions complained of here were the product of this joint undertaking.

JURISDICTION

8. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1331, as this matter arises under the Constitution and laws of the United States.

9. This action alleges civil rights and conspiracy to commit civil rights violations under 42 U.S.C. § 1983.

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10. This action seeks Declaratory and Injunctive relief under 28 U.S.C. §§ 2201 and 2202.

11. Jurisdiction over individual agents of the State of Oregon, in their official capacities, is invoked pursuant to the *ex Parte Young*, 209 U.S. 123 (1908), exception to Eleventh Amendment immunity. For purposes of brevity and clarity, this complaint refers to the individual agents of DEQ acting in their official capacity as "Defendant DEQ." Also, for purpose of brevity and clarity, this complaint refers to the individual agents of the OHA acting in their official capacity as "Defendant OHA."

12. The MCHD is a "person" within the meaning of 42 U.S.C. § 1983. At all times herein, MCHD acted through the deliberate choices made by officials responsible for establishing final policy with respect to the Bullseye matter. Those officials include but are not limited to Multnomah County Public Health Director Joanne Fuller, Multnomah County Environmental Health Director Jae Douglas, MCHD and Tri-County Health Officer Dr. Paul Lewis, and MCHD Incident Manager Uei Lei.

VENUE

13. Venue is properly in the United States District Court for the District of Oregon. 28 U.S.C. § 1391.

I.

INTRODUCTION

14. Bullseye revolutionized the world-wide art glass industry in 1981 by creating colored glass that could be fused together without the lead used to join glass in traditional stained-glass. By 2016, Bullseye had 150 employees, serviced thousands of customers world-wide, and had developed distribution partnerships in Europe, Australia, Asia, and South

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America. Colored glass is created when very small quantities of powdered metallic minerals are combined with sand and melted into glass. By 2016, Bullseye was manufacturing about 2,500 tons of colored glass per year.

15. Throughout its history, Bullseye worked closely with DEQ, the agency responsible for implementation of the federal Clean Air Act. Like other businesses its size throughout Oregon, Bullseye relied on DEQ's expertise and guidance on environmental issues. Beginning in 1986, DEQ issued "Air Contaminant Discharge Permits" to Bullseye that it has fully complied with. As a result, Bullseye believed its operations were protective of the environment and safe to the health of its neighbors.

16. Starting in 1984, Bullseye told DEQ it used metal in its glass and identified the small amounts used in the manufacturing process. Since then, it has always provided complete and truthful information to DEQ and has complied with all emissions requirements DEQ imposed.

17. In 2004, and again in 2011, DEQ stated that, even if ***all*** the metal Bullseye used was emitted into the atmosphere, it would not be a cause for concern.

18. On February 1, 2016, DEQ's Portland Area Air Quality Manager visited the Bullseye facility and told Bullseye officials that preliminary results of environmental testing which had raised concerns about Bullseye's emissions had been leaked to the press. Nonetheless, DEQ told Bullseye it was in compliance with its DEQ permit.

19. Following the news leaks, a DEQ spokesperson publicly stated that "neither the company nor the state environmental regulators knew that Bullseye could be emitting excess metals." She added, "We didn't know, and they didn't know. . . . It looks like this is new information, that people were not aware of these emissions."

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20. Shortly after receiving news of the alleged emissions, Bullseye voluntarily suspended its use of cadmium and arsenic in its glass making. Thereafter, Bullseye spent approximately $2.2 million installing a state-of-the-art emissions control system—a system that exceeds all state and federal standards.

II.

STATEMENT OF THE CASE

A. Defendants leaked incomplete and misleading information to the press, triggering criticism of Defendants which spawned a misinformation campaign against Bullseye.

21. Between November 23, 2015 and February 2, 2016, DEQ and OHA officials leaked incomplete, unverified, and misleading details of various testing—discussed in more detail below—to the press.

22. All this occurred without prior notice to Bullseye, which was dumbfounded to learn after its decades of transparency and compliance with DEQ that there could be concerns about harmful emissions.

23. The resulting press accounts and public response were sharply critical of Defendants for permitting Bullseye's alleged emissions and for their collective, multi-decade failure to regulate industrial emissions and protect the air. This public outcry caused a crisis atmosphere among Defendants.

24. Until the public criticism and the resulting crisis, DEQ had planned to follow its normal practices and have its permit writers develop a plan to reduce Bullseye's emissions. Instead, because of bad press—and not because of any change in health risk—Defendants created an artificial public health crisis by falsely portraying Bullseye as a dangerous and recalcitrant polluter in an effort to shift attention away from Defendants' failure to regulate Oregon industry. As part of that effort, Defendants also took unprecedented and unlawful actions

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against Bullseye. Those actions were driven not by legitimate health concerns but by Defendants' desire to portray themselves as aggressive defenders of the environment and by vilifying Bullseye.

25. Central to Defendants' concerted efforts was the creation of the Joint Information Center ("JIC") which coordinated all internal and external communications among partner agencies. All communications and activities, including the press releases and public statements discussed below, were edited and approved by the Defendants via the JIC before distribution or implementation.

26. As part of this scheme, the Governor's Office convened "Air Toxics Principals" meetings with OHA, DEQ, and an outside public relations firm that was paid $50,000 for one month's advice. That group collectively sought to "reset" public perception and to, among other things, "create confidence in DEQ, OHA and other government agencies managing the issue."

27. Defendants knew early on that media coverage of Bullseye's potential past air emissions was misleading, inaccurate, lacking context, and provoking unnecessary and unwarranted public concern. Defendants' internal communications characterize press accounts as "very misleading," "inaccurate negative journalism," and filled with "inflammatory language and innuendo" and "misrepresentation." One paper's reporting as even characterized as "irresponsibly alarmist."

28. Defendants knowingly reinforced this false reporting through their own false statements and by concealing material information from the public.

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B. Defendants consciously and systematically lied about the true nature of environmental concerns regarding Bullseye's potential past emissions.

29. Beginning in February 2016, and continuing to this day, Defendants jointly lied about the true nature of the environmental and public-health concerns surrounding Bullseye and created an artificial public health crisis by:

a) falsely representing that DEQ air monitoring was a reliable indication of air quality;

b) falsely characterizing health risks from Bullseye;

c) falsely treating the results of a study of moss as reliable evidence of air and environmental contamination;

d) failing to disclose soil sampling results that showed no health concerns near Bullseye;

e) falsely warning that vegetable gardening in the area around Bullseye was dangerous;

f) promoting blood testing for residents and children near Bullseye, knowing there was no evidence of increased blood lead levels in the area;

g) providing additional false justifications for the regulatory and administrative actions set forth in section II, C of this complaint.

1. Defendants knew the DEQ air monitoring was not reliable.

30. Between October 6 and November 2, 2015, college students operating DEQ equipment conducted 18 days of air monitoring in a parking lot across the street from Bullseye. Defendants knowingly relied on the faulty and misleading results of that air monitoring to create contrived public health concerns in the community neighboring Bullseye so they could mischaracterize Bullseye and justify their unlawful actions towards it.

31. Defendants knew at the time they relied on the air monitoring that it (1) was not designed or implemented to produce reliable air quality information and (2) was fraught with technical and quality control problems that rendered the results useless. Defendants were aware the monitoring was flawed and unreliable because:

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a) The monitoring was designed solely to determine whether Bullseye could be linked to metals that had been discovered in samples of moss near Bullseye. It was not intended to determine Bullseye's impact on air quality.

b) DEQ and EPA's internal management directives require months of monitoring to estimate air quality. Defendants knew eighteen days was not a representative sample.

c) Defendants knew the results were likely skewed by alternative sources of pollution, unique conditions at the time of the testing, and unexplained "spikes" in the results.

d) Defendants knew that Bullseye's use of metals varied greatly on a day-to-day basis but made no attempt to compare the air monitoring to Bullseye's actual production schedule.

e) The monitoring and lab testing failed to abide by the minimum quality control requirements for a valid study.

f) Data from the sampling was not even entered into DEQ databases because "DEQ did not plan to own or use the data in any fashion." Yet DEQ proceeded to broadcast the results as if the data was highly reliable DEQ data.

g) DEQ failed even to determine if the monitor filters were contaminated. Later evaluation by Bullseye revealed that in fact the filters were contaminated with high levels of chromium.

h) Documentation of the monitoring necessary to validate the study was incompetently prepared and lost.

32. It took almost two years, until December 2017, for Defendants to concede publicly that the monitoring lacked proper procedural or quality controls and that an evaluation of Bullseye's emissions in a draft Public Health Assessment "should not be relied upon for any purpose." By then, Defendants had spent 22 months vilifying Bullseye as a public-health danger and an unrepentant polluter. Yet, even though Defendants now acknowledge the air monitoring is unreliable, they continue to rely on it in their deceitful campaign about Bullseye, as described below in Section II, C, 4.

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2. Defendants misrepresented the health risks from the monitoring results.

33. Defendants' campaign of deception included misrepresenting the significance of the air monitoring. Defendants deliberately overstated the potential health impact of Bullseye's alleged emissions by relying on and misrepresenting a standard that had never before been used to evaluate emissions. Even today, under Oregon's new regulatory scheme, Bullseye's alleged emissions levels would not justify Defendants' statements or actions. See Section II, D, below.

34. As calculated by DEQ, the results showed the average air concentrations of arsenic and cadmium during the test period as set forth in the following chart. These readings are expressed in nanograms per cubic meter. A nanogram is one-billionth of a gram and is invisible. Typical urban/industrial air concentrations have been established by the Agency for Toxic Substances and Disease Registry (ATSDR), a part of the U.S. Department of Health and Human Resources. As shown in this chart, Bullseye's alleged emissions were well within ATSDR's typical urban concentrations:

	Average Concentration over 18-day Test Period (ng/m^3)	ATSDR Typical Urban Air Concentrations (ng/m^3)
Arsenic	31.7	20-100
Cadmium	29.4	15-150

35. Defendants did not disclose ATSDR's urban air concentrations or characterize Bullseye's alleged emissions as typical for an urban area.

36. Defendants instead misled the public by comparing their unreliable monitoring results to "Ambient Benchmark Concentrations" (ABCs). Defendants knew ABCs were

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established to set long-range aspirational goals for air quality throughout an entire airshed, not as standards for evaluating emissions monitored near a single source. Before the ginned-up Bullseye scare, Defendants never used ABCs to characterize a company's emissions, and more importantly, never treated alleged emissions exceeding the ABCs as imminent health hazards.

37. The ABCs were set to identify air pollutant concentrations that would increase an individual's risk of cancer by one in a million, if an individual was exposed to that concentration continuously, 24-hours-a-day, over 70 years. To use the ABCs as a basis for evaluating 18-days of air monitoring is like equating a single puff of a cigarette to a lifetime of chain smoking.

38. Defendants misleadingly portrayed the ABCs to the public as if they were air emissions standards. Because the ABC for arsenic was 0.2 ng/m^3, Defendants mischaracterized Bullseye's alleged average emissions as 150 times the ABC, as if the 18 days of emissions had lasted a lifetime. Similarly, because the long-term goal for Cadmium was 0.6 ng/m^3, Defendants characterized Bullseye's alleged average emissions as 50 times the benchmark. Defendants thereby misled the public into believing that Bullseye had increased their risks of getting cancer by 200 times.

39. Defendants knew this characterization of Bullseye as a major polluter and health risk was a distortion. In fact, much of Portland's air is projected to have pollution concentrations between 81 and 170 times the ABCs, as shown in this DEQ chart:

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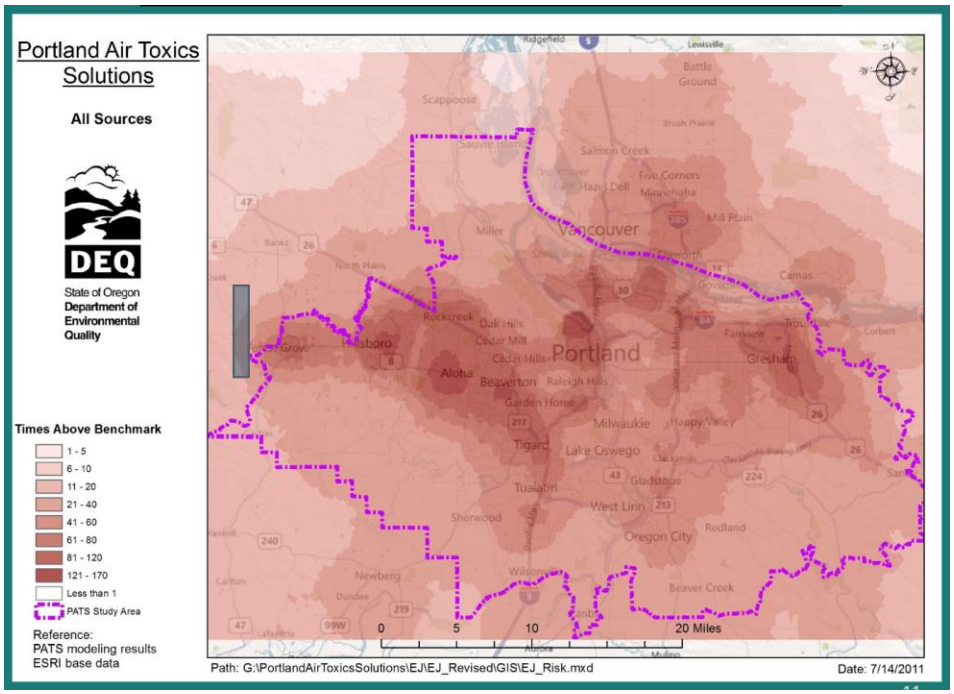

40. Moreover, Defendants knew that other specific industrial activities in the Portland area and elsewhere in the state have emissions hundreds and even thousands of times the ABC levels, but Defendants have never treated those exceedances as the basis for the inflammatory statements or unlawful actions of the sort aimed at Bullseye. See Section II, D, below.

41. Defendants knew their use of ABCs would mislead and alarm the public and thereby create an artificial public health crisis when there was none, as revealed by the following internal documents:

a) On February 2 and 3, 2016, DEQ advised the Governor's staff that Oregon's benchmarks were different from federal health levels and that it was "very misleading to lump them together."

b) On February 4, a DEQ employee discussed evaluation of the cadmium air samples, and cited EPA studies saying that "short-term screening levels are not designed to predict the occurrence of effects, and individual sample measurements greater than the screening levels do not imply an immediate health threat."

c) OHA's senior toxicologist said that an increased cancer rate of 200 in a million was too low to attribute increased health risk to Bullseye.

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d) Even assuming the reported air concentrations were correct, there were no health concerns absent "decades of exposure at these levels in an up close, work environment."

e) The reported air concentrations were "100 times BELOW Occupational Safety and Health Administration health standards" for workers continuously exposed to the metals.

f) In 2009 and 2011, DEQ cooperated with the EPA in testing air quality at the Tubman School in North Portland and reporting the results to the public. Instead of the ABCs, EPA set "screening levels" for arsenic at 150 ng/m3, and cadmium at 30 ng/m3.

g) On February 17, an EPA official reminded DEQ of the Tubman study and stated: "Since the screening values for the school study were conservative, i.e. air toxics near schools, would it be appropriate and helpful to use this work as a yardstick for communicating the risk associated with the SE PDX monitoring?"

42. Defendants ignored EPA's advice and rejected the standards they had relied on in a study of air in schools just a few years earlier. Those screening levels, like the ATSDR averages, would have shown Bullseye's alleged admissions to be below levels of concern.

3. Defendants continue to misrepresent an experimental study of tree moss.

43. Defendants' press leaks and misinformation campaign included misrepresentations about a study of metals in tree moss conducted by the U.S. Forest Service (Forest Service). Defendants falsely claimed, and continue to claim, that the moss study established air concentrations of metals and environmental contamination beyond individual moss samples, knowing that was not true.

44. The Forest Service designed the moss study as an experiment to find an inexpensive way of identifying unknown pollution sources. As a result, the study did not sample moss around regulated industries that were reporting their metal emissions to DEQ. The study was never intended to be, and could not be converted into, a study of air pollution in Portland.

45. Although Defendants understood well that the moss study was of limited purpose and value, in February 2016 Defendants published and continue to this day to publish maps

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purporting to show that the moss study established elevated concentrations of cadmium, arsenic, and other heavy metals in the air and environment surrounding Bullseye. Defendants published these maps on their websites, provided them to news media, and displayed the maps at various public gatherings. Defendants touted the maps to make knowingly inaccurate predictions about environmental contamination and health impacts and thereby falsely portray Bullseye as the center of a health crisis, when Defendants knew that was not true.

46. Defendants knew at the time of publication that these maps were (1) not reliable, (2) did not establish air concentrations of heavy metals, and (3) did not show environmental contamination beyond individual moss samples. More specifically:

a) Defendants knew the maps had not been peer-reviewed and therefore were unverified.

b) DEQ's chief public information officer acknowledged "I fully understand why it's not appropriate to share raw data that isn't even DEQ's and that hasn't even been published."

c) DEQ knew the moss study did not provide data necessary for air or environmental contamination predictions.

d) Defendants did not know when the moss was contaminated or how long metal stayed in moss.

e) Defendants knew that metal concentrations in soil samples taken from soil directly below moss samples were below any risk guidelines.

f) Defendants knew that metal concentrations in moss were only useful as a "screening tool" to identify possible sources of pollution.

g) And, in an email shared with DEQ, the Governor's Office stated: "continually treating the moss hypothesis like gospel is just simply a misrepresentation;" "We have no, I repeat, no independent verification that any of these theories are correct."

47. Defendants' knowing and deliberate presentation of false and misleading information is exemplified by maps purporting to show cadmium pollution caused by Bullseye. On February 27, 2015, the Forest Service provided the map below on the left to DEQ. It shows

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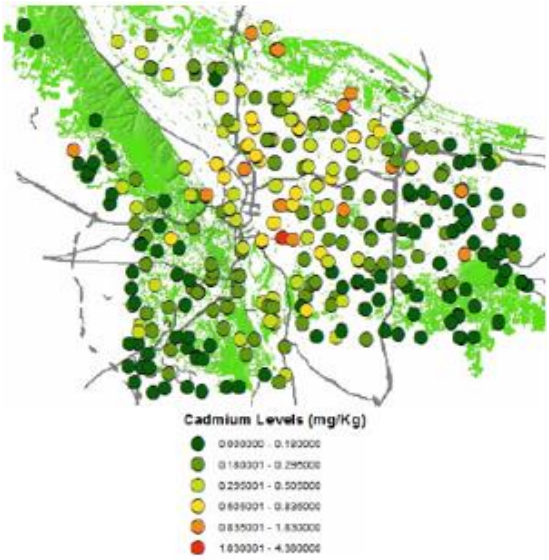
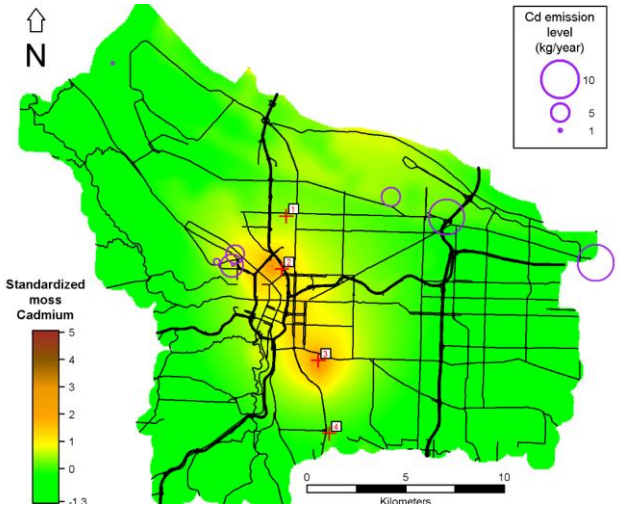
the relative concentration of cadmium in individual moss samples throughout Portland. In February 2016, the map on the right was produced, after months of joint refinement by the Forest Service and DEQ. Defendants thereafter sponsored public meetings where this map was presented, relied upon the map at those public gatherings, and created their own versions of this and other maps:





48. The map on the right deceptively portrayed Bullseye's impact on the environment. It eliminated at least 8 moss samples that had high cadmium concentrations, primarily because those samples were not near Bullseye. Also, the map falsely represented that there was no cadmium in moss near known industrial cadmium emitters (1) by eliminating moss hotspots near permitted cadmium emitters, and (2) by failing to disclose that the moss sampling deliberately avoided taking samples in industrial areas, including near the ESCO steel plant, a well-known emitter of cadmium.

49. Defendants knew the misleading moss maps would provoke unfounded public health concerns and anger. When the Forest Service was drafting its final moss study, it planned to include maps like the Bullseye cadmium map, showing areas of contamination for a long list

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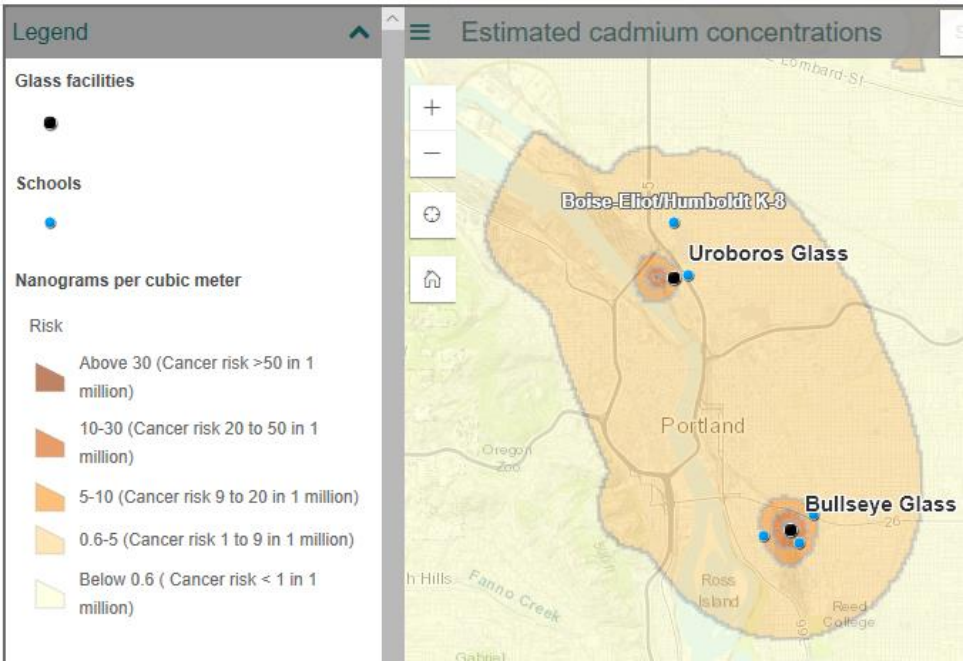
of pollutants—such as lead, nickel, and chromium—throughout Portland. Significantly, however, a DEQ manager expressly objected to publishing those maps for fear the public would see "death clouds" throughout Portland and that the maps would raise more questions and concerns about pollution in Portland generally. DEQ thus recognized that the moss maps created artificial health concerns and deliberately minimized the impact of those maps everywhere in the city except for the areas surrounding Bullseye and another colored art glass company, where the maps continue to portray non-existent clouds of cadmium pollution.

50. Defendants combined the unreliable air monitoring with the misleading moss maps and created a map that purported to show estimated cadmium air concentrations and resulting cancer risks in Portland. MCHD posted an interactive version of the map on its website, where it remains today:



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51. Any doubt about the accuracy of this map was removed on April 5, 2016, when Forest Service researchers acknowledged there was insufficient data "to convert moss-based maps into atmospheric concentration values." The MCHD map falsely does exactly that.

52. MCHD has done nothing to correct this falsehood or properly inform the public about health risks. Quite the contrary, MCHD continues to publish this false map on its website, which was updated as recently as September 28, 2018. An injunction is necessary to halt this ongoing conduct.

3. Defendants concealed soil test results that were favorable to Bullseye and undermined the Defendants' narrative about Bullseye.

53. During October 2015, at the same time the air monitoring was occurring, the Forest Service collected additional moss samples and soil samples taken directly below the moss-bearing trees. Defendants knowingly concealed results of the soil sampling (1) because the results did not fit the narrative that Bullseye was contaminating the environment and (2) because those results would have shown that the moss study did not establish health risks.

54. The soil samples showed that the average arsenic and cadmium levels in the soil around Bullseye were at "background levels." The "background level" of a metal is the concentration at which it is expected to occur in an area because of both natural sources and general urban contamination. Moreover, the highest concentration of cadmium in a soil sample associated with Bullseye showed a concentration that was one-twentieth of DEQ's health risk levels. In other words, these soil samples showed no harmful environmental contamination attributable to Bullseye at the same place as the moss samples.

55. The U.S. Forest Service shared these soil results with DEQ and OHA on four occasions between January 25 and February 8. In those communications, the Forest Service noted that the results were not consistent with the moss samples and asked DEQ and OHA about

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possible health implications. Indeed, OHA's senior toxicologist engaged in a phone conversation about the results with the Forest Service on January 25, but realizing that the soil results posed no health risk, chose to focus on the air monitoring instead.

56. Notably, *Defendants never disclosed these soil results to the public.* In fact, at a press conference on February 12, DEQ's Regional Administrator, accompanied by OHA's senior toxicologist, denied that any past soil testing had taken place.

57. Defendants failure to disclose these results was a lie by omission. They failed to share with the public information that would have accurately characterized Bullseye's impact on the environment and shown the absence of health concerns.

4. Defendants knowingly distributed a baseless contaminated vegetable warning.

58. On February 15 and 18, 2016, Defendants issued joint statements telling residents within one-half mile of Bullseye to avoid eating backyard produce until further notice. These announcements caused baseless public health concerns. The principal authors were policy-making officials at MCHD. In the organizational chart for Defendants' Incident Management Team, MCHD and OHA shared responsibility for providing this type of public statement.

59. Defendants knew these statements were inaccurate and misleading, as established by the following:

a) In 2013 publications, OHA said arsenic and lead were not efficiently absorbed in plants and that people just needed to wash soil off vegetables to make them safe.

b) By February 8, 2016, both DEQ and OHA knew Forest Service soil samples showed average metal concentrations at background levels.

c) On February 9, 2016, at a public gathering at Cleveland High School, OHA relied on the general precautions in the 2013 publications. Yet a few days later, Defendants issued the vegetable warning, although they had not received any additional data to warrant this abrupt change in direction.

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d) After the February 15 vegetable warning, Defendants drafted a public "Questions and Answers" (Q&A) document which stated that metals in soil are not absorbed in vegetables and the danger is only from eating soil attached to the produce. This discussion was deleted from the final Q&A, and the original warning not to eat vegetables was retained, by an MCHD official who acknowledged that his edit was arbitrary."

e) On February 18, that false Q&A was distributed at a community meeting at Tubman School. *The Oregonian* that same day published an article based on the Q&A headlined "Don't Eat Backyard Vegetables."

f) On February 26, DEQ and OHA deleted from a draft document an explanation that "the health benefits of growing and eating fresh vegetables outweighs the risks posed by the metals."

60. On February 26, Defendants received and discussed the results of additional soil testing performed by DEQ, which confirmed the earlier Forest Service results. At that time—just eight days after the vegetable warning at the Tubman meeting—Defendants knew that the levels of metals in soil near Bullseye were too low to be harmful to people and that there was no concern about vegetable consumption. The notes of that meeting show Defendants knew there was a need for a public statement about consuming home-grown vegetables.

61. Yet, instead of promptly disclosing these findings to the public and alleviating the false concerns and alarm they had created, Defendants deliberately re-published the false and spurious vegetable warning.

a) On March 2, OHA proposed announcing that garden produce was unequivocally safe, referring to the 2013 publications. MCHD officials, however insisted that it was not yet "time to back off on our recommendation."

b) On March 3, a Q&A circulated among the IMT and the MCHD communications officer noted the vegetable warning was unchanged.

c) On March 4, Defendants published a Q&A regarding schools that warned not to eat vegetables from school gardens.

62. Then, on March 9, Defendants finally issued a public statement that it was safe to eat vegetables. But by then Bullseye was irreparably damaged by its false portrayal as a threat to

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public health: Demonstrators had already marched on Bullseye, claiming their vegetables were poisoned and vandals had broken a window at the plant. Also, between the time Defendants knew the vegetable warning was wrong and the time they corrected it, Bullseye had been sued in a $1.2 billion class action case based, in part, on allegations by Bullseye's neighbors that they were afraid to garden.

5. Defendants promoted blood testing when they knew there was no evidence of increased blood lead levels near Bullseye

63. On May 19, 2016, Defendants created another public health panic over a single emission of lead by Bullseye and offered blood lead level testing to Bullseye's neighbors and children who attended a nearby daycare. Defendants deliberately failed to disclose information they knew at the time they created the panic, specifically, that hundreds of previous blood lead level tests conducted throughout Southeast Portland showed no evidence of elevated blood lead levels in persons near Bullseye. In short, they knew there was no basis for panic.

64. Beginning February 9, 2016, DEQ set up extensive air monitoring surrounding Bullseye. Over the ensuing three months, the average air concentration for lead was 90% below any levels of concern.

65. On the morning of May 19, 2016, Defendants learned of a one-day spike in lead in the air on May 9. This event is discussed in greater detail in Section II, C, 3 below.

66. Shortly after learning of that lead reading, OHA officials accessed an OHA database that records all blood lead level tests in Oregon. By 11:35 am on May 19, OHA officials knew their data showed approximately 1,000 blood lead level tests in Southeast Portland with no evidence of a pattern or concentration of elevated blood lead level tests in the area surrounding Bullseye.

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67. As with the soil testing, Defendants concealed this truthful and exculpatory information from the public because it would have contradicted their false narrative about Bullseye's threat to health. Defendants knew that Bullseye's decades of alleged emissions had not produced excess blood lead levels in the neighboring population. They did not, however, disclose this to the public. Instead, hours later, they promoted further public panic by making the baseless recommendation that children in Bullseye's vicinity get immediate blood testing.

68. As a result, for no good reason, Defendants wrongly and needlessly further inflamed public sentiment against Bullseye. While the testing took place, mothers brought their crying children into Bullseye's retail space to blame Bullseye for what it had done, not knowing they had been misled by Defendants. Ultimately, Defendants announced that the blood testing did not show increased levels of lead in blood.

6. False Statements in 2017

69. Defendants' pattern of deception and lies continued into 2017, when on May 11, Dr. Paul Lewis, one of the MCHD policymakers described above, testified before the Oregon legislature and falsely stated that (1) Bullseye experimented with "burning uranium" in its furnaces and (2) that Bullseye could have reduced emissions 99% with "off-the-shelf, relatively inexpensive" filtration.

C. Defendants undertook regulatory, administrative, and public actions based on false and misleading information which they knew to be unlawful and designed to portray Bullseye in a false light.

70. Starting in early February 2016, after the media firestorm about Bullseye erupted, Defendants looked to arm themselves with the "legal hammer" they publicly admitted was lacking, to shift the blame to Bullseye and characterize it as a major, recalcitrant polluter.

71. By February 26, 2016, Defendants knew that DEQ soil testing had confirmed the prior Forest Service soil testing and established that levels of metal in the soil around Bullseye

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"were too low to be harmful to people, including children at the nearby day care." This contradicted the false health scare Defendants had knowingly and intentionally been promoting by showing that (1) decades of alleged air emissions had not, in fact, polluted the environment, (2) the experimental moss study was inconsistent with established science, (3) neighborhood vegetable gardening was safe, and (4) there was no risk to children in the neighboring daycare center.

72. This news did not stop Defendants' campaign against Bullseye. Rather, following receipt of DEQ's soil study results, Defendants schemed to further deceive Bullseye and the public about health risks and exercise powers they did not have.

1. Defendants engaged in bad faith negotiations for an air emissions agreement with Bullseye, disguising their intention to take coercive actions.

73. After emissions questions arose, Bullseye quickly initiated negotiations with DEQ, the Oregon Department of Justice, and the Governor's Office to establish an Air Emissions Agreement. The ostensible purpose of these negotiations was to determine how Bullseye could continue operating while safeguarding the environment.

74. Bullseye tried to quickly address any and all health concerns, was completely open, candid, and cooperative with Defendants, and was willing to take corrective action. Defendants took a different approach. They deceived Bullseye about the actions they were planning and they delayed finalizing an agreement that would have immediately protected public health. Instead, they used the negotiations to portray Bullseye as a company that was fighting DEQ every step of the way while they secretly schemed to take unlawful actions against Bullseye.

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75. From the outset of the negotiations, Bullseye agreed it would install a baghouse pollution control device by September 1, 2016. In the interim, Bullseye constructed a temporary baghouse, and agreed to use cadmium only in furnaces connected to it. Bullseye also stopped using chrome. Otherwise, the parties negotiated over controlling Bullseye's emissions by limiting the volume of metals placed into the furnaces.

76. By March 3, 2016, Bullseye believed it had reached an agreement with DEQ, and had been assured the agreement would be signed the following day. Instead, Bullseye was informed that the "optics weren't right" for the Governor, and that the agreement would be delayed until the following week. Bullseye was told the Governor wanted to be able to release the DEQ soil test results—and lift the vegetable warning—at the same time as an agreement with Bullseye was announced. This was not true. In fact, Defendants were scheming to falsely portray Bullseye as a long-time violator of federal law.

2. Defendants unlawfully asserted federal regulatory control over Bullseye, after nearly a decade of telling Bullseye the regulation did not apply, so that they could threaten massive fines and coerce Bullseye.

77. By mid-February, unbeknownst to Bullseye, DEQ was scheming with EPA to apply a federal regulation to Bullseye that DEQ knew specifically exempted Bullseye. They pursued this unlawful effort even after receipt of the DEQ soil samples, and even after they could have executed an air emissions agreement with Bullseye.

78. On March 9, 2016—the same day it released the DEQ soil samples to the public—DEQ asked EPA to apply to Bullseye the federal regulation for Glass Manufacturing Area Sources, 40 CFR 63.11448 (Subpart SSSSSS) [hereinafter referred to as 6S]. Regulation 6S was adopted to control metal emissions from glass manufacturing facilities that operate "continuous furnaces," meaning furnaces that continuously produce glass 24-hours a day and continuously produce the kind of metal emissions 6S was intended to reduce. Continuous

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furnaces are huge and can produce as much glass in one day as Bullseye produces in a year. For example, the Owens-Brockway glass bottle manufacturing plant in Portland operates continuous furnaces that produce 1000 times the glass that a Bullseye furnace does.

79. When EPA was drafting 6S, DEQ told Bullseye to comment on the regulation, because it appeared the drafters had not considered small art glass manufacturers. Bullseye did so, explaining that it operated small "periodic" furnaces that made small, discrete batches of glass.

80. In direct response to Bullseye's comments, EPA changed the draft regulation by inserting language clarifying that it only applied to "continuous" furnaces. It is worth emphasizing: *EPA changed this regulation specifically to exclude the type of furnaces Bullseye uses*. This change clarified that the rules were meant for large manufacturers, not Bullseye or other small colored glass manufacturers.

81. Over the ensuing years, even after questions arose about Bullseye's emissions, both DEQ and EPA stated Bullseye's periodic, batch furnaces were not subject to 6S.

82. In their quest to exert regulatory authority over Bullseye, when they knew they did not have any, Defendants settled on illegally rewriting this clear regulation. DEQ secretly consulted with EPA about how to accomplish this, and EPA provided DEQ with a rough draft for its March 9 letter. After a decade of calling Bullseye's furnaces "periodic," DEQ and EPA decided to instead describe those same furnaces as "continuous," despite the fact that there had been no change in the furnaces or their operation.

83. This all happened while Bullseye thought it was negotiating over an emissions agreement. Clearly, Defendants' negotiations with Bullseye were not candid attempts at problem-solving, as Bullseye believed. Rather, Defendants were scheming to impose unlawful

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regulatory authority over Bullseye.

84. DEQ and the Governor's office took this action so they could present themselves as tough on pollution regulation and enforcement. It was also designed to portray Bullseye as a company that had been operating in violation of federal law for years, and to divert attention from DEQ's feckless performance on toxic emissions controls.

85. On April 12, 2016, EPA issued a "non-binding regulatory interpretation" asserting that DEQ had "discretion" to apply 6S to Bullseye.

86. On April 13, 2016, DEQ wrote a letter advising Bullseye that it was now subject to the federal regulation 6S because its furnaces were "continuous." DEQ's letter did not acknowledge, or attempt to explain, how it could have reached this conclusion when Bullseye was operating the same furnaces, in the same way, as it had throughout the time DEQ described them as "periodic."

87. Incredibly, on April 25, 2016, DEQ threatened enforcement action against Bullseye for failing to comply with 6S since 2010, even though Bullseye's 2011 DEQ permit declared that 6S was not applicable to Bullseye. DEQ threatened to fine Bullseye up to $1.5 million for doing exactly what DEQ had told it to do.

88. Following DEQ's illegal exercise of 6S authority, DEQ proposed an emissions agreement that would have required Bullseye to agree to application of 6S. Bullseye believed that request was improper but continued working to control its emissions and provided daily information to DEQ about its furnace operations.

3. Defendants unlawfully and deceitfully invoked the Governor's "Cease and Desist" authority.

89. On May 19, 2016, at the request of OHA and DEQ, Governor Brown directed DEQ to issue a Cease and Desist Order (CDO) forbidding Bullseye from using eight different

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metals in uncontrolled furnaces. The CDO crippled Bullseye's business. This action was premised on a lie, and furthered Defendants' campaign to falsely characterize Bullseye as a risk to health.

90. The requests from DEQ and OHA and the order itself were based on the following false statement: "The current national ambient air quality standard for lead is 150 nanograms per cubic meter." In fact, the national air standard for lead was 150 ng/m^3 *on a three-month daily average*. Defendants knowingly misstated the national standard to make it look like Bullseye had exceeded a health standard when it had not.

91. Defendants knew Bullseye had never violated the federal air quality standard. In fact, between February and May 2016 Bullseye's average lead emissions were one-tenth the federal standard.

92. The CDO stated that Bullseye's lead emission for May 9, 2016 were measured at 416 ng/m^3. Defendants knew that an emission would have to be "much, much higher" and last over a long period of time to pose a health risk. Defendants also knew there was no pattern of elevated blood lead level near Bullseye. Defendants therefore knew this one-day emission did not pose "an imminent and substantial endangerment," as required by ORS 468.115(1), the statutory basis for issuing the CDO.

93. DEQ knew *exactly* how Bullseye was operating on May 9. That day, a DEQ inspector visited Bullseye and examined the "batch ticket" that showed how much lead Bullseye was melting. Neither Bullseye nor the inspector thought the amount of lead Bullseye was melting that day was problematic. Yet, despite Bullseye's complete transparency, DEQ acted like the May 9 emissions were the result of surreptitious, unpredictable or dishonest conduct by Bullseye.

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94. On May 24, Bullseye offered to sign a binding agreement limiting its use of lead to solve the problem. DEQ representatives responded favorably, but said they needed to check with the Governor's Office.

95. Instead of solving the problem, Defendants threatened to issue a second ten-day CDO unless Bullseye immediately signed an agreement admitting it had violated an "emission standard" when it had not, in an obvious attempt to coerce Bullseye into accepting the falsehood underlying the initial CDO. Also, the proposed agreement asked Bullseye to endorse Defendants' unlawful, retroactive application of 6S. Bullseye declined.

96. On May 29, Defendants made good on their threat and issued a second CDO, again based on false statements. Defendants falsely stated that the conditions that warranted the original CDO had "not been remedied," when they knew that was not true. Defendants knew the spike in lead emissions had been caused by the amount of lead Bullseye had melted at the time, that Bullseye had subsequently reduced the amount of lead it used, and that emissions had returned to acceptable levels. Defendants ignored Bullseye's offer to enter a binding agreement to reduce the amount of lead it used.

97. On June 6, 2016, faced with the closure of its business—which would have put 150 employees out of work—and under duress, Bullseye had no choice but to execute a Mutual Agreement and Final Order (MAO) that required Bullseye to comply with some provisions of Regulation 6S.

98. Defendants continued their dishonest justification of the CDO long after the fact. In August 2016, when asked why it had not used that authority in response to another company's emissions, DEQ falsely stated that "Bullseye exceeded a short-term (or 24-hour) exposure limit" knowing it was not true.

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4. Defendants are scheming to use a Public Health Assessment to justify their past conduct and further vilify Bullseye.

99. Beginning in March 2016, Defendants publicly began a formal Public Health Assessment (PHA) to determine the health effects of Bullseye's past emissions. The preparation of the PHA is still underway. Defendants are using that process to continue to create false health concerns about Bullseye, and to justify their past false statements and unlawful actions.

100. Defendants are perpetuating the falsehoods underlying the CDO to justify their past conduct. Without any health-related basis for doing so, Defendants insist that Bullseye's brief spike in lead emissions should be viewed as dangerous, just because they previously said so. OHA's senior toxicologist wrote an internal email stating that because the Governor had ordered the "unprecedented cease-and-desist order" based on the lead emissions, Defendants were "more or less obligated" to treat those emissions as a health risk.

101. Defendants continue to base alleged health risks on the October 2015 air monitoring data, even though drafts of the PHA show they know that (1) the short-term, flawed study cannot accurately predict historical emissions levels, and (2) the flaws in execution and quality control of the monitoring render its results useless.

102. Defendants continue to ignore fatal flaws in their October 2015 air monitoring data and invent "assumptions" to overcome missing data or failed quality controls. For example, Defendants cannot explain how up to 40% of their alleged emissions occurred on days when Bullseye was not in production. Nor do they account for contamination in the air monitoring filters. And they falsely predict health effects as if Bullseye's alleged chrome emissions are similar to those from metal plating operations, when they know that is not true.

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103. None of this is designed to provide the public with an honest assessment of Bullseye's potential health impacts. Instead, it is designed to justify and prolong Defendants' scapegoating Bullseye.

D. Defendants treated Bullseye differently than any other alleged polluter and have now crafted a regulatory scheme that will treat future pollution concerns differently and far more leniently than Bullseye.

104. The standards Defendants applied to evaluating emissions and potential health consequences for Bullseye are different from those applied to any Oregon company before, during, and after the Defendant-created Bullseye scare. Defendants routinely permitted and continue to permit companies to emit massive quantities of pollutants—far in excess of anything Bullseye allegedly emitted—into residential communities without promoting health panics.

105. On the rare occasion when Defendants have tested emissions, they have never treated emissions exceeding ABCs—including those far greater than Bullseye's—as the basis for shutting down a company's production or issuing the sort of health alarms they aimed at Bullseye.

106. This disparate treatment reveals that Defendants' public characterization of Bullseye was fundamentally deceptive and shows that their motive has been to divert attention from their failures to regulate Oregon's air by heaping blame on one small business.

107. DEQ routinely permits companies to emit huge quantities of pollutants including metals into Portland's air. Several of the top Portland area industries estimated their emission—based on EPA and DEQ formulas—for 2014 as follows:

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Company	Total Emissions in pounds	Total Metals Emissions in pounds
Arclin Surfaces	279,304	4 (Nickel)
Boeing	29,220	28 (Chromium)
Daimler	509,590	28 (Chromium)
ESCO	535,992	43 (Chromium) 86 (Lead) 445 (Manganese) 42 (Nickel)
Evraz	1,280,281	192 (Lead) 779 (Manganese)
Gunderson	298,823	1245 (Manganese); 2226 (Copper)
Precision Castparts	28,303	17 (Chromium); 160 (Nickel); 6 (Copper); 9 (Cobalt)
TOTAL	2,961,513	116 (Chromium) 9 (Cobalt) 206 (Nickel) 2469 (Manganese) 278 (Lead) 2232 (Copper) 5,310

108. For the same period of time, using similar DEQ-approved formulas, Bullseye reported total emissions of 4,744 pounds, and its metal usage did not trigger any reporting formulas. Yet when faced with public health concerns about big polluters, Defendants have never taken actions like they took against Bullseye. Even following the deceptive Bullseye scare, DEQ is not planning to subject any other industry in Oregon to the level of regulation or enforcement action it applied to Bullseye.

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1. DEQ continues its longtime practice of permitting emission of huge quantities of toxic metals into residential areas.

109. **ESCO Steel**: For decades, ESCO steel's metal foundry in Northwest Portland emitted huge quantities of pollutants into the surrounding neighborhood—just five blocks from Chapman Elementary School—that triggered citizen complaints. In July 2016, ESCO reported that its 2015 emissions totaled more than 16,000 pounds of hazardous pollutants, including 54 pounds of lead, 34 pounds of chromium, and 11 pounds of cadmium. DEQ permitted these emissions and Defendants raised no health concerns. Yet just five weeks earlier, they had declared Bullseye to be an imminent and substantial health risk when an air monitor detected one-millionth of a gram of lead in the air.

110. **Hollingsworth & Vose (H&V)**: H&V manufactures glass fiber near downtown Corvallis, Oregon. After decades of environmental problems and citizen complaints, testing in 2014 showed that H&V's emissions were more than 20 times its permitted amount. DEQ responded by *permitting H&V to continue emitting these massive quantities in violation of its permit*. Although DEQ levied a fine and required H&V to file new permit applications, it did not shut down the plant or impose immediate emissions restrictions as it did with Bullseye. As a result, during 2015 H&V emitted 15.8 tons of hazardous pollutants, including 320 pounds of chromium, 20 pounds of manganese, 13 pounds of arsenic, 18.4 pounds of selenium, 12.4 pounds of lead, and 10 pounds of nickel.

111. **Owens Brockway**: Owens Brockway manufactures glass bottles at its facility in Northeast Portland. When it filed its permit renewal application with DEQ in 2018, Owens Brockway reported that its was emitting more than six tons of toxics every year, including 20 pounds of arsenic, 28 pounds of cadmium, 48 pounds of lead, and 340 pounds of chromium. DEQ is considering this application but has not raised any health alarms or sought emissions

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decreases in the meantime. Even while treating all of Bullseye's chromium emissions from glass melting as acid-mist hexavalent chromium, DEQ has not imposed the same presumptions on Owens-Brockway's glass melt. Instead, DEQ has permitted the company to continue massive chromium emissions into the Cully neighborhood while further studying the matter.

2. Defendants have never treated ABC exceedances as the basis for a public health alarm or regulatory action.

112. **AmeriTies:** AmeriTies preserves wood for use as railroad ties at its facility in The Dalles. Air monitoring in 2011 detected naphthalene at a concentration of 9,666 times the ABC, almost 50 times worse than Bullseye's alleged ABC exceedances. Additional air monitoring in 2016 and 2017 still showed maximum naphthalene levels at 183 and 83 times the ABCs. Defendants responded to these results by patiently working with AmeriTies to decease emissions over time. Instead of panicking the public by treating the ABCs as cancer-risk multipliers, Defendants instead evaluated AmeriTies emissions based on Short Term Guidelines, which are thousands of times higher than the ABCs. When asked to justify its failure to seek a CDO as it did with Bullseye, DEQ falsely stated that Bullseye had exceeded a short-term exposure limit.

113. **ENTEK International LLC**: Entek emits the carcinogen trichloroethylene (TCE) from its facility in Lebanon, Oregon. In 2017, air monitoring showed that its emissions were as high as 90 times the ABC for TCE. In stark contrast to its Bullseye conduct, DEQ acknowledged that it did not have enforceable standards to stop those emissions and has since been conducting further testing and working with ENTEK to set an emissions level in its permit.

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3. Cleaner Air Oregon Regulations permit companies with emissions comparable to Bullseye's to reduce gradually their emissions.

114. Following the Bullseye publicity eruption, Defendants created an air emissions regulatory scheme called Cleaner Air Oregon. For the first time, this scheme set emissions goals that incorporate the ABCs.

115. Under Cleaner Air Oregon, Bullseye's alleged emissions in October 2015 would not require a company to take the immediate emissions curtailment steps that Bullseye voluntarily took nor subject a company to the actions of the sort Defendants took against Bullseye. In fact, emissions would have to be 500 times the ABCs—more than double what was alleged about Bullseye—to require immediate curtailment. In addition, a brief spike in emissions, like the lead spike that Defendants used to justify the Cease and Desist Order, would have to be 5 to 20 times higher than Bullseye's to warrant immediate curtailment. Instead, under Cleaner Air Oregon, a company like Bullseye would have years to identify and install emissions control technology.

116. In short, Defendants' scientific and public policy judgments about Oregon's air, both before and after they manufactured the fraudulent Bullseye crisis, do not justify the false and inflamed rhetoric or the baseless administrative actions that Defendants wrongly subjected Bullseye to.

E. Bullseye has suffered immediate and lasting damage to its property interests because of Defendants' actions.

117. As a result of its innovative product designs, commitment to promoting art and architecture, and long-standing support for the arts and arts education, Bullseye enjoyed substantial good will in the Portland community, and throughout the art glass world.

118. Because of Defendants' actions, the goodwill Bullseye had established over decades, together with its ongoing business, suffered immediate and ongoing injury.

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119. Examples of the damages to Bullseye's goodwill include:

a) On February 12, 2016, the Portland Public Schools Creative Science School cancelled plans with Bullseye to develop a program for elementary school kids to use glass as a tool that bridges the disciplines or art and science, because Bullseye had "poisoned a community."

b) On February 13, 2016, Bullseye, its employees, and even a few community voices who tried to add reason to the dialogue, began receiving threatening phone calls and emails.

c) On February 16, 2016, about 80 of Bullseye's neighbors staged a demonstration with news media on the street outside of Bullseye, accusing it of poisoning children and vegetables.

d) On February 17, 2016, a neighbor wrote to Bullseye's world-wide distributors blaming Bullseye for cancer, thyroid issues, autoimmune disorders, and lung and kidney disease, and asking the distributors to suspend buying from Bullseye until it installed pollution controls.

e) On February 19, 2016, a representative of TriMet, which was using Bullseye glass for mosaics in construction projects, suggested the contractual relationship was in jeopardy because Bullseye was "dangerous" and "untrustworthy."

f) On February 29, 2016, a window at Bullseye was smashed by a vandal.

g) On March 4, 2016, a charitable organization cancelled an event planned for Bullseye's resource center.

h) In May 2016, a supplier suspended Bullseye's credit and required payment in advance for raw materials.

i) In February 2017, Bullseye's long-time Australian partner said Bullseye's bad press had caused the Australian market to lose confidence in Bullseye and the industry as a whole.

j) In June 2017, a local Portland art glass school and Bullseye reseller closed because it lost business following Bullseye's bad publicity.

k) In July 2017, a long-time customer cancelled a purchase contract, fearing that Bullseye might go bankrupt.

l) On July 28, 2017, a posting on the Eastside Portland Air Coalition Facebook page— "liked" by a group administrator—advocated "vigilante Justice," including burning down the Bullseye factory, burning down the owner's homes, and hanging the owners from the Hawthorne Bridge.

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m) In December 2018, a children's glass project at a local school was cancelled because of complaints about Bullseye's alleged pollution.

n) On February 18, 2019, Bullseye closed its Bullseye Projects exhibit and project space in Portland's Pearl District, after 20 years of operation, because the loss of goodwill destroyed its core mission of providing educational programming.

120. Despite a solid pattern of growth over many years, the demand for Bullseye's products has decreased and earnings have dropped significantly.

121. On information and belief, the loss of goodwill Bullseye has experienced because of Defendants' actions to date, caused damages and foreseeable damages of approximately $30,000,000.

CAUSES OF ACTION

Count One – Civil Rights and Conspiracy to Commit Civil Rights Violations

122. All the foregoing allegations are incorporated into this cause of action.

123. The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law."

124. Corporations are "persons" within the meaning of this provision.

125. Under Oregon law, businesses have a property interest in their "goodwill." That term is defined to include: "favor or advantage in the way of custom that a business has acquired beyond the mere value of what it sells whether due to the personality of those conducting it, the nature of its location, its reputation for skill or promptitude or any other circumstance incidental to the business and tending to make it permanent."

126. At all times relevant to this complaint, plaintiff Bullseye Glass enjoyed substantial goodwill. This goodwill was the product of, among other things, more than 40 years of Bullseye's skillful and innovative product design, its prompt delivery of high-quality products,

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its commitment to promoting colored glass for both art and architectural uses, its environmental record, and its commitment to the community around it.

127. Plaintiff Bullseye Glass alleges that Defendants deprived and conspired to deprive it of its constitutionally protected property interest in its goodwill, without due process of law. Defendants, acting under color of law, committed due process violations by making false and misleading statements about Bullseye and by directing unconstitutional arbitrary actions at Bullseye, as detailed above.

128. This conduct violates the Fourteenth Amendment to the United States Constitution and is actionable under 42 U.S.C. §§ 1983.

Count Two -- Declaratory and Injunctive Relief

129. All the foregoing allegations are incorporated into this cause of action.

130. Under federal law, courts are empowered to resolve "a case of actual controversy" by declaring "the rights and other legal relations of any interested party seeking such a declaration." 28 U.S.C. § 2201.

131. There is a real and actual controversy between Bullseye and Defendant Whitman, in his capacity as Director of the Oregon Department of Environmental Quality, regarding DEQ's acts alleged above, including its asserted authority to apply a specific federal regulation to Bullseye, namely 40 CFR 63.1148 (Subpart SSSSSS).

132. By unlawfully asserting regulatory authority over Bullseye under 40 CFR 63.1148 (Subpart SSSSSS), as adopted under state law in OAR 340-244-0220, Defendant Whitman has caused Bullseye to be subjected to additional, unwarranted regulatory obligations and limitations on its operations to which it would not otherwise be subject, and to risk liability under both state and federal law for engaging in operations that should not be subject to 40 CFR 63.1148

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(Subpart SSSSSS). The controversy between Bullseye and Defendant Whitman is thus real and substantial and demands specific relief through a decree of conclusive character.

133. For the reasons set forth in detail above, Plaintiff Bullseye Glass seeks a declaration that it is not subject to 40 CFR 63.1148 (Subpart SSSSSS), as adopted under state law in OAR 340-244-0220, and that Oregon's assertion of authority under that regulation was unlawful.

RELIEF REQUESTED

Plaintiffs request a judgment and order of damages and attorneys' fees as follows:

On Count One

A. Declaring that Defendants have deprived and conspired to deprive Bullseye Glass of its property interests without due process of law, in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

B. Enjoining Defendants from further depriving Bullseye of its due process property rights, the exact scope of such injunction to be determined after discovery.

C. Granting damages against the Multnomah County Health Department in an amount equal to Bullseye's loss of goodwill, in an amount of $30 million.

D. Granting such other prospective relief as may be just and equitable, including ancillary relief.

E. Awarding attorney's fees incurred by Plaintiff in preparing, filing, and prosecuting this action.

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On Count Two

A. Declaring that 40 CFR 63.1148 (Subpart SSSSSS) does not apply to Bullseye.

B. Declaring that defendant Whitman's assertion of authority under 40 CFR 63.1148 (Subpart SSSSSS) to impose certain regulations on Bullseye was unlawful.

C. Enjoining Defendants from further asserting authority over Bullseye under 40 CFR 63.1148 (Subpart SSSSSS).

D. Granting such other prospective equitable relief as may be just and equitable, including ancillary relief.

DATED this 21st day of February 2019.

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