



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

September 26, 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7668 0752

Mr. Jim Warner  
Ardagh Glass Inc.  
401 east Jackson Street, Suite 2800  
Tampa, Florida 33602

Consent Agreement and Final Order in the Matter of  
Ardagh Glass Inc., Docket No. TSCA-05-2012-00**25** **TSCA-05-2012-0025**

Dear Mr. Warner:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 26, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$21,402 is to be paid in the manner described in paragraphs 42 through 44. Please be certain that the number **BD 2751247X026** and the docket numbers are written on both the transmittal letter and on the check. Payment is due by October 26, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Ken Zolnierczyk  
Pesticides and Toxic Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5 TSCA-05-2012-0025

IN THE MATTER OF: ) Docket No. TSCA-05-2012-0025  
ARDAGH GLASS INC. ) Proceeding to Assess a Civil Penalty  
WINCHESTER, IN, ) Under Section 16(a) of the Toxic  
Respondent. ) Substances Control Act,  
 ) 15 U.S.C. § 1367(a)  
 )

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PROTECTION AGENCY

CONSENT AGREEMENT AND FINAL ORDER  
COMMENCING AND CONCLUDING A PROCEEDING

1. This is an administrative proceeding commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Sections 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is Ardagh Glass Inc. (Respondent), a corporation doing business in the State of Indiana. On August 20, 2012, Respondent purchased Anchor Glass Container, Corporation.
4. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
5. Respondent consents to the assessment of the civil penalty specified in this Consent Agreement and Final Order (CAFO), and to the terms of this CAFO.

## JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

7. Respondent waives its rights to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its rights to appeal this CAFO.

### GENERAL ALLEGATIONS: STATUTORY AND REGULATORY BACKGROUND

8. The Polychlorinated Biphenyl (PCB) Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (*43 Fed. Reg.* 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use rule (PCB Rule) was lawfully promulgated on May 31, 1979 (*44 Fed. Reg.* 31514), and incorporated the disposal and marking regulations. The PCB Rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

9. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), states that it shall be unlawful for any person to fail or refuse to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or any rule promulgated or order issued under Section 6 of TSCA, 15 U.S.C. § 2605.

10. Respondent is a "person" as defined at 40 C.F.R. § 761.3 and is subject to the prohibitions set forth at 40 C.F.R. Part 761.

11. Respondent is the owner and operator of the facility at 603 East North Street, Winchester, Indiana (Respondent's facility).

12. On May 27 and May 29, 2008, two representatives of the EPA inspected

Respondent's facility to determine compliance with the PCB Rule. At the time of the inspection, the facility was owned by Anchor Glass Container, Corporation.

13. At the time of the inspection, Respondent had 6 PCB transformers in use.

14. Respondent's 6 PCB transformers are nameplated or labeled as PCB.

15. Respondent's PCB transformers are PCB articles as defined at 40 C.F.R. § 761.3.

16. Respondent's PCB articles are PCB items as defined at 40 C.F.R. § 761.3.

17. As a result of the May 27 and May 29, 2008 inspection, Complainant has determined that Respondent has violated the federal regulations regarding the use, disposal and marking requirements of the PCB regulations, 40 C.F.R. Part 761, and thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

#### COUNT I

18. The General Allegations set forth at paragraphs 8-17 are incorporated by reference as though set forth here in full.

19. The PCB rule at 40 C.F.R. § 761.30(a)(1)(viii) prohibits, as of December 1, 1985, the storage of combustible materials within a PCB transformer enclosure, or within 5 meters of the PCB transformer enclosure, or within 5 meters of an unenclosed PCB transformer.

20. At the time of the inspection, Respondent had maintained combustible materials within 5 meters of a PCB labeled Turner Electric Works PCB transformer at Substation 1A.

21. Respondent's storage of combustible materials, constitutes a violation of 40 C.F.R. § 761.30(a)(1)(viii) and Section 15 of TSCA, 15 U.S.C. § 2614.

## COUNT II

22. The General Allegations set forth at paragraphs 8-17 are incorporated by reference as though set forth here in full.

23. The PCB rule at 40 C.F.R. § 761.1 (a)(3) states that provisions that apply to PCBs at concentrations greater than or equal to 50 ppm also apply to PCB contaminated surfaces with PCB concentrations greater than or equal to 10  $\mu\text{g}/100\text{cm}^2$ .

24. Unless otherwise stated at 40 C.F.R. § 761.60(a)(2)-(5), 40 C.F.R. § 761.60 requires that PCBs at concentrations of 50 ppm or greater be disposed of in an incinerator which complies with 40 C.F.R. § 761.70.

25. On May 29, 2008, U.S. EPA took two adjacent representative samples from Respondent's concrete pad for PCB transformer # PBV1591-02 at Substation 2.

26. The representative samples showed the presence of PCBs at concentrations of 27  $\mu\text{g}/100\text{cm}^2$  and 41  $\mu\text{g}/100\text{cm}^2$ .

27. The PCB rule at 40 C.F.R. § 761.60(d)(1) states that spills and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs.

28. Respondent's failure to dispose of PCBs in accordance with the applicable disposal requirements constitutes a violation of 40 C.F.R. § 761.60 and Section 15 of TSCA, 15 U.S.C. § 2614.

## COUNT III

29. The General Allegations set forth at paragraphs 8-17 are incorporated by reference as though set forth here in full.

30. The PCB rule at 40 C.F.R. § 761.1 (a)(3) states that provisions that apply to PCBs at concentrations greater than or equal to 500 ppm also apply to PCB contaminated surfaces with PCB concentrations greater than or equal to 100 µg/100cm<sup>2</sup>.

31. Unless otherwise stated at 40 C.F.R. § 761.60(a)(2)-(5), 40 C.F.R. § 761.60 requires that PCBs at concentrations of 50 ppm or greater be disposed of in an incinerator which complies with 40 C.F.R. § 761.70.

32. On May 29, 2008, U.S. EPA took a representative samples from the concrete floor below the drain valve of Respondent's Turner Electric Works PCB transformer at Substation 1A.

33. The representative samples showed the presence of PCBs at concentrations of 290 µg/100cm<sup>2</sup>.

34. The PCB rule at 40 C.F.R. § 761.60(d) (1) states that spills and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs.

35. Respondent's failure to dispose of PCBs in accordance with the applicable disposal requirements constitutes a violation of 40 C.F.R. § 761.60 and Section 15 of TSCA, 15 U.S.C. § 2614.

#### COUNT IV

36. The General Allegations set forth at paragraphs 8-17 are incorporated by reference as though set forth here in full.

37. The PCB rule at 40 C.F.R. § 761.40(j) requires that all doors, fences, hallways, or means of access to a PCB transformer be marked with an M<sub>L</sub> label.

38. On May 29, 2008 the entrance doorway to Respondent's PCB transformer # PBV1591-02 located at Substation 2 was not marked with an M<sub>L</sub> label.

39. Respondent's failure to mark the entrance doorway with the M<sub>L</sub> label constitutes a violation of 40 C.F.R. § 761.40(j) and Section 15 of TSCA, 15 U.S.C. § 2614.

#### CIVIL PENALTY

40. Section 16 (a)(2)(B) of TSCA, 15 U.S.C. § 2615 (a)(2)(B), requires the Administrator to consider the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of such prior violations, the degree of culpability and such other matters as justice may require.

41. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 16 (a)(2)(B) of TSCA, Respondent's cooperation and willingness to promptly return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$21,402.

42. Within 30 days of the effective date of this CAFO, Respondent must pay the \$21,402 civil penalty for the TSCA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

43. The check must note "In the Matter of Ardagh Glass Inc.," the docket number of this CAFO and the billing document (BD) number.

44. A transmittal letter stating Respondent's name, complete address, the case title, the

case docket number and the billing document number must accompany the payment.

Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Kenneth Zolnierczyk (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Susan Perdomo (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

45. This civil penalty is not deductible for federal tax purposes.

46. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount (plus interest at currently prevailing rates) by action in the appropriate United States District Court and in such an action, the validity, amount and appropriateness of the civil penalty are not reviewable, Section 16(a)(4)(B) of TSCA, 15 U.S.C. § 2615(a)(4)(B).

47. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the day payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 day past due.



In addition, Respondent must pay a 6 percent per year penalty on any principle amount 90 days past due.

#### GENERAL PROVISIONS

48. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO. Compliance with the terms and conditions of this CAFO fully satisfies Respondent's liability to the EPA for all allegations of noncompliance identified in this CAFO.

49. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law not identified in this CAFO.

50. This CAFO does not affect Respondent's responsibilities to comply with TSCA and other applicable federal, state and local laws.

51. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for TSCA.

52. This CAFO is for the purpose of settlement. Neither the fact that the Respondent and the EPA have agreed to this CAFO, nor the General Allegations and Counts in it, shall be used for any purpose in any proceeding except the enforcement by the Respondent and the EPA of this CAFO. As to others who are not parties to this CAFO, nothing contained in this CAFO is an admission of Respondent of any facts or conclusions of law identified in this CAFO and this CAFO is not an admission by Respondent of liability for conditions at or near the

Respondent's facility in Winchester, Indiana and it is not a waiver of any right, cause of action or defense to which the Respondent is otherwise entitled.

53. The terms of this CAFO bind Respondent, its successors and assigns.


54. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

55. Each party agrees to bear its own costs and attorney fees in this action.

56. This CAFO constitutes the entire agreement between the parties.

IN THE MATTER OF:  
ARDAGH GLASS INC.


ARDAGH GLASS INC., RESPONDENT

September 13, 2012   
Date Jim Warner  
General Counsel and Secretary  
Ardagh Glass Inc.

IN THE MATTER OF:  
ARDAGH GLASS INC.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, COMPLAINANT

September 24, 2012  
Date


  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

IN THE MATTER OF:  
ANCHOR GLASS CONTAINER CORPORATION  
TSCA-05-2012-0025

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.3. IT IS SO ORDERED.

9-24-12  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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PROTECTION AGENCY


**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Spartan Painting, was filed on September 7, 2012, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7668 0752 to:

Mr. Jim Warner  
Ardagh Glass Inc.  
401 East Jackson Street, Suite 2800  
Tampa, Florida 33602

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Susan Perdomo, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. TSCA-05-2012-00<sup>25</sup>

**TSCA-05-2012-0025**

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