



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

March 2, 2015

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

MAR 02 2015

EPA ORC WS
Office of Regional Hearing Clerk

Re: *In the matter of Ardagh Glass Inc., Docket No. CWA-01-2015-0030*

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Joseph R. Grewe, Ardagh Glass Inc.
John W. Carroll, Esq. (Respondent's counsel)
Joseph Canzano, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the matter of)

ARDAGH GLASS INC.)
Milford, MA)

Respondent.)

Proposing to Assess a Civil Penalty)
Under Section 309(g) of the Clean)
Water Act, 33 U.S.C. § 1319(g))
_____)

Docket No. CWA-01-2015-0030

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

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I. STATEMENT OF AUTHORITY

1. This administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) is issued to Ardagh Glass Inc. (“Respondent” or “AGI”) pursuant to Sections 309(g) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Director, Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 (“EPA”).

2. Pursuant to Sections 309(g) of the CWA, 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice, Complainant hereby provides notice of a proposal to assess a civil penalty against Respondent for the following violations of the Act: (1) failing to comply with the terms and conditions of the National Pollutant Discharge Elimination System (“NPDES”) General Permit for Noncontact Cooling Water for the Commonwealth of Massachusetts (“NCCW GP”) in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); (2) failing to comply with the terms and conditions of the Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with

Industrial Activity (“MSGP”) in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); and (3) discharging process water containing pollutants into navigable waters of the United States without authorization in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

II. STATUTORY AND REGULATORY BACKGROUND

Discharge of Pollutants

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

4. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership [or] association.”

6. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, chemical wastes, biological materials, heat, rock, sand, and industrial waste discharged into water.

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

10. Forty C.F.R. § 122.2 defines “waters of the United States” to include, among

other things: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

11. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires stormwater discharge “associated with industrial activity” to be authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit.

12. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

13. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26.

14. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include storm water runoff, snow melt runoff, and surface runoff and drainage.

15. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

16. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii) require stormwater discharges associated with industrial activity to be authorized by a NPDES permit.

17. Forty C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply for a permit through

a group application, or seek coverage under a general permit.

18. Forty C.F.R. § 122.26(b)(14)(ii) specifies that facilities engaging in industrial activity includes facilities classified as Standard Industrial Classification (“SIC”) code 32 (except 323), including SIC code 3221 (glass containers).

19. On September 29, 1995, EPA issued the NPDES Stormwater Multi-Sector General Permit for Industrial Activities (“1995 MSGP”). 60 Fed. Reg. 50804 (Sept. 29, 1995). EPA reissued the Multi-Sector General Permit for Industrial Activities on October 30, 2000 (“2000 MSGP”), 65 Fed. Reg. 64746 (Oct. 30, 2000), and reissued it again on September 29, 2008 (“2008 MSGP”). 73 Fed. Reg. 56572 (Sept. 29, 2008). The 2008 MSGP became effective on the date of issuance.

20. The 2008 MSGP contains terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharge associated with industrial activity.

21. Under the 2008 MSGP, a facility discharging stormwater associated with industrial activity is required to submit a Notice of Intent (“NOI”) to be covered under the 2008 MSGP, prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”), select, design, install, and implement control measures in order to minimize pollutant discharges, conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.

22. On April 28, 1994, EPA issued the NPDES General Permit for noncontact cooling water discharges to certain waters of the States of Maine, Massachusetts, and New Hampshire (Permit Nos. MEG250000, MAG250000, and NHG250000) (“1994 NCCW GP”), FR Doc. No. 94-9938 (Apr. 28, 1994), and reissued it on April 25, 2000 (“2000 NCCW GP”), 65 Fed. Reg. 24195 (Apr. 25, 2000). EPA replaced the 2000 NCCW GP with the NPDES General Permit for

noncontact cooling water discharges to certain waters of the Commonwealth of Massachusetts (including both Commonwealth and Indian Country lands) and the State of New Hampshire on July 31, 2008 (“2008 NCCW GP”), 73 Fed. Reg. 44721 (Jul. 31, 2008), and reissued it on October 2, 2014 (“2014 NCCW GP”) 79 Fed. Reg. 59489 (Oct. 2, 2014). The 2008 NCCW GP became effective on August 1, 2008, and the 2014 NCCW GP became effective on November 3, 2014.

23. The 2008 NCCW GP contains terms and conditions designed to ensure the implementation of practices to minimize adverse environmental impacts due to noncontact cooling water intake and discharges.

24. Under the 2008 NCCW GP, a facility discharging noncontact cooling water is required to submit a NOI to be covered under the permit, conduct monitoring and sampling, meet certain effluent limitations, utilize best technology available for cooling water intake structures in order to minimize adverse environmental impacts, and meet other eligibility requirements.

25. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, and for violating any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

III. ALLEGATIONS

26. AGI (formerly known as Saint-Gobain Containers, Inc.) is a corporation organized under the laws of the State of Delaware with its principal place of business in Muncie, Indiana.

27. AGI is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

28. AGI owns and/or operates a glass manufacturing facility located at 1 National

Street in Milford, Massachusetts (the “Facility”), which is classified under SIC code 3221.

29. At the Facility, AGI manufactures glass bottles, jars, and other containers. The site encompasses approximately 24 acres.

30. AGI controls all daily business and industrial operations at the Facility and meets the definition of “operator” of the Facility, as defined at 40 C.F.R. § 112.2.

31. AGI submitted a NOI seeking coverage for the Facility under the 2008 NCCW GP on September 25, 2008.

32. EPA provided acknowledgement to AGI on June 9, 2010, indicating that the Facility’s authorization under the 2008 NCCW GP was effective on July 1, 2010 (authorization number MAG250911).

33. The 2008 NCCW GP expired on July 31, 2013, but because AGI submitted an NOI for coverage under the 2008 NCCW GP prior to its expiration, AGI’s coverage under the 2008 NCCW GP was administratively continued until the permit was reissued on November 3, 2014 (the “2014 NCCW GP”). To date, AGI has not submitted an NOI for coverage under the 2014 NCCW GP.¹

34. Under the 2008 NCCW GP, AGI was authorized to discharge noncontact cooling water from outfall numbers 001 and 003 to wetlands adjacent to the Charles River, subject to the terms and conditions in the 2008 NCCW GP.

35. Outfall numbers 001 and 003 are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

36. The discharges from outfall numbers 001 and 003 contained chemical wastes,

¹ Facilities with existing coverage under the 2008 NCCW GP that wished to seek continuing coverage under the 2014 NCCW GP were required to file an NOI to EPA and the respective State for coverage within 90 days of the effective date of the 2014 NCCW GP, or by no later than February 1, 2015. To date, AGI has not filed an NOI seeking coverage under the 2014 NCCW GP.

industrial wastes, and heat, which are “pollutant[s]” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).²

37. AGI submitted a NOI seeking coverage for the Facility under the 2008 MSGP on December 19, 2008, and resubmitted the NOI on April 7, 2009.

38. EPA provided acknowledgement to AGI on June 1, 2009, indicating that the Facility’s authorization to discharge stormwater associated with industrial activity under the 2008 MSGP was effective on July 1, 2009 (permit number MAR05D703).

39. The 2008 MSGP expired on September 29, 2013, but coverage has been administratively continued for facilities that submitted an NOI for coverage prior to expiration of the 2008 MSGP until such time as a new general permit to replace it has been issued.

40. Outfalls referred to as numbers 001, 002, 004, 005, 006, 007, 008, and 009 in the “Overall Drainage Flows” map created for AGI by Guerriere & Halnon, Inc. (dated August 12, 2014) and the “Summary of Flow Rates” document titled “G-7044” prepared by or at the direction of AGI discharge stormwater from the Facility into wetlands adjacent to the Charles River.

41. Outfall numbers 001, 002, 004, 005, 006, 007, 008, and 009 are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

42. The discharges from outfall numbers 001, 002, 004, 005, 006, 008, and 009 contain chemical and industrial wastes, rock, and sand, which are “pollutant[s]” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

43. The wetlands described in paragraphs 34 and 40 above, and the Charles River into which the wetlands flow, are “waters of the United States,” as defined in 40 C.F.R. §122.2, and,

² The Facility no longer discharges noncontact cooling water through outfall number 001; discharge of noncontact cooling water from this outfall was eliminated in August 2011.

thereby, “navigable waters,” as defined in Section 502(7) of the CWA, 33 U.S.C. §1362(7).

44. At all times relevant to the allegations in this Complaint, AGI has been authorized to discharge certain industrial wastewaters from the Facility to the Town of Milford Wastewater Treatment Plant under an industrial sewer permit issued by the Town of Milford and a Massachusetts Department of Environmental Protection (“MassDEP”) Permit for Industrial Sewer User, BWP IW 39 (the “Industrial Sewer Permits”).

45. On September 17, 2013, an authorized representative of EPA visited the Facility to review compliance with Federal and State environmental laws and regulations, including compliance with the CWA (the “Inspection”).

IV. VIOLATIONS

COUNT ONE: FAILURE TO COMPLY WITH EFFLUENT LIMITATIONS IN THE 2008 NCCW GP

46. Paragraphs 1 through 45 are incorporated herein by reference.

47. Part 1, Section 1 of the 2008 NCCW GP requires regular monitoring of flow, pH, discharge temperature, and total residual chlorine, among other things, in discharges from outfalls 001 and 003 at the Facility.

48. Part 1, Section 1 of the 2008 NCCW GP requires that the maximum daily flow of outfalls covered by the permit shall not be more than the flow reported by the permittee on its NOI. The effluent limitations for Respondent’s maximum daily flow are 0.115 million gallons per day for outfall 001 and 0.100 million gallons per day for outfall 003, as reported in Respondent’s September 25, 2008 NOI.

49. Part 1, Section 1 of the 2008 NCCW GP requires that the pH of discharges from outfalls 001 and 003 shall not be less than 6.5 standard units nor greater than 8.3 standard units.

50. Part 1, Section 1 of the 2008 NCCW GP requires that the temperature of

discharges from outfalls 001 and 003 shall not be greater than 83 degrees Fahrenheit.

51. Part 1, Section 1.2.5 of the 2008 NCCW GP sets the maximum daily and average monthly concentration of total residual chlorine (“TRC”) allowed in the effluent of discharges authorized by the permit based on the appropriate water-quality criteria and the available dilution in the receiving water. Both the dilution factor and applicable TRC limits are approved by EPA and MassDEP during review of the permittee’s NOI. TRC limits only apply to facilities that use potable water for noncontact cooling water.

52. Upon review of Respondent’s NOI, EPA and MassDEP approved maximum daily and average monthly TRC limits of 20 micrograms per liter for Respondent’s effluent from outfalls 001 and 003, in accordance with Section 1.2.5 of the 2008 NCCW GP.

53. During the months of May 2010, July 2010, June 2011, July 2011, and August 2011, Respondent discharged noncontact cooling water from outfall 001 to wetlands adjacent to the Charles River having a flow above the 0.115 million gallons maximum daily limit set forth in Part 1, Section 1 of the 2008 NCCW GP and Respondent’s September 25, 2008 NOI.

54. During the month of May 2012, Respondent discharged noncontact cooling water from outfall 003 to wetlands adjacent to the Charles River having a maximum daily flow above the 0.100 million gallons per day limit set forth in Part 1, Section 1 of the 2008 NCCW GP and Respondent’s September 25, 2008 NOI.

55. During the months of December 2011, August 2012, and September 2013, Respondent discharged noncontact cooling water from outfall 003 to wetlands adjacent to the Charles River having a pH above the 8.3 standard units limit set forth in Part 1, Section 1 of the 2008 NCCW GP.

56. During the months of July 2010 and August 2010, Respondent discharged

noncontact cooling water from outfall 001 to wetlands adjacent to the Charles River having a discharge temperature above the 83 degrees Fahrenheit limit set forth in Part 1, Section 1 of the 2008 NCCW GP and Respondent's September 25, 2008 NOI.

57. During the months of July 2010, August 2010, June 2011, July 2011, and August 2011, Respondent discharged noncontact cooling water from outfall 001 to wetlands adjacent to the Charles River having a TRC concentration above the daily maximum limit of 20 µg/L set forth in Section 1.2.5 of the 2008 NCCW GP and approved by EPA and MassDEP.

58. During the months of March 2010, April 2010, May 2010, June 2010, July 2010, August 2010, September 2010, October 2010, November 2010, December 2010, January 2011, February 2011, March 2011, April 2011, May 2011, June 2011, July 2011, August 2011, September 2011, October 2011, November 2011, December 2011, January 2012, February 2012, March 2012, April 2012, May 2012, June 2012, July 2012, August 2012, September 2012, October 2012, November 2012, December 2012, January 2013, February 2013, March 2013, April 2013, June 2013, July 2013, August 2013, December 2013, and January 2014, Respondent discharged noncontact cooling water from outfall 003 to wetlands adjacent to the Charles River having a TRC concentration above the daily maximum and monthly average limits of 20 µg/L set forth in Section 1.2.5 of the 2008 NCCW GP and approved by EPA and MassDEP.

59. Accordingly, Respondent discharged noncontact cooling water that violated the effluent limitations in Part 1, Section 1 of the 2008 NCCW GP on at least 1,331 occasions described above in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and, therefore, was in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), from at least March 2010 through January 2014.

**COUNT TWO: FAILURE TO COMPLY WITH 2008 MSGP
TERMS AND CONDITIONS/DISCHARGE OF STORMWATER
NOT IN COMPLIANCE WITH 2008 MSGP**

60. Paragraphs 1 through 59 are incorporated herein by reference.
61. Part 4.1.1 of the 2008 MSGP and Section 9.9.1 of the Facility's SWPPP, which is contained in the "Saint Gobain Containers, Inc. Contingency, Emergency, and Spill Prevention Plan for Milford, Massachusetts (EPA ID Number MAD 075348912)" (the "CESPP"), require that Respondent conduct routine facility inspections ("RFIs") of all areas of the Facility where industrial materials or activities are exposed to stormwater, and of all stormwater control measures used to comply with the effluent limits in the 2008 GP, at least quarterly.
62. Respondent did not conduct RFIs of all areas of the Facility where industrial materials or activities are exposed to stormwater, and of all stormwater control measures used to comply with the effluent limits in the 2008 GP, in each quarter of 2010-2012 and the first three quarters of 2013. Therefore, Respondent did not comply with Part 4.1.1 of the 2008 MSGP from at least March 2, 2010 through September 30, 2013.
63. Part 4.2.1 of the 2008 MSGP and Section 9.9.2 of the CESPP require that Respondent collect stormwater samples from each outfall and conduct visual assessments of each such sample on a quarterly basis. Part 4.2.2 of the 2008 MSGP and Section 9.9.2 of the CESPP require that documentation of all quarterly visual assessments must be maintained on site with the Facility's SWPPP.
64. Respondent did not conduct and/or maintain documentation of visual assessments of stormwater samples from any stormwater outfalls at the Facility for the following quarters: the fourth quarter of 2010, the first quarter of 2011, the fourth quarter of 2012, the first quarter of 2013, and the second quarter of 2013.

65. In addition, Respondent conducted visual assessments of stormwater samples from some, but not all, stormwater outfalls at the Facility during each of the following quarters: the first through third quarters of 2010, the second through fourth quarters of 2011, the first through third quarters of 2012, the third and fourth quarters of 2013, and the first through third quarters of 2014. Specifically, from at least the first quarter of 2010 through the third quarter of 2014, Respondent failed to conduct any visual assessments of stormwater samples from stormwater outfalls 004, 005, 006, 007, or 009.

66. Therefore, Respondent did not comply with Part 4.2.1 of the 2008 MSGP during each of the quarters referenced in paragraphs 64 and 65 above.

67. Part 4.3.1 of the 2008 MSGP and Section 9.8.1 of the CESPP require that comprehensive site inspections must be conducted by qualified personnel, including at least one member of the facility's stormwater pollution prevention team, during each of the following inspection periods:

- Year 1: September 29, 2008 – September 29, 2009
- Year 2: September 29, 2009 – September 29, 2010
- Year 3: September 29, 2010 – September 29, 2011
- Year 4: September 29, 2011 – September 29, 2012
- Year 5: September 29, 2012 – September 29, 2013

68. Part 4.3.1 of the 2008 MSGP requires that comprehensive site inspections must cover all areas of the facility affected by the requirements in the permit, including the areas identified in the facility's SWPPP as potential pollutant sources where industrial materials or activities are exposed to stormwater, any areas where control measures are used to comply with effluent limits in the permit, and areas where spills and leaks have occurred in the past 3 years. Comprehensive site inspections must also include a review of monitoring data and a review of the past year's visual and analytical monitoring.

69. Respondent did not conduct and/or maintain documentation of comprehensive site inspections for Years 2 or 3, as defined in Part 4.3.1 of the 2008 MSGP. Therefore, Respondent did not comply with Part 4.3.1 of the 2008 MSGP from at least March 2, 2010 through September 29, 2011.

70. Part 5.1.2 of the 2008 MSGP requires that a permittee's SWPPP include, *inter alia*, the locations of all potential pollutant sources; the locations of areas where certain activities, including liquid storage tanks and processing and storage areas, are exposed to precipitation; the locations of all stormwater inlets and outfalls, with a unique identification code for each outfall, indicating if you are treating one or more outfalls as substantially identical, and an approximate outline of the areas draining to each outfall.

71. Respondent failed to include the following items, observed during EPA's Inspection, in the site diagram in its SWPPP: (1) the locations of totes containing waste Duracote liquid, piles of glass cullet, and roll-off containers containing "bad batch" cullet, each a potential pollutant source potentially exposed to precipitation; (2) the locations of all stormwater inlets and outfalls, with a unique identification for each outfall; and (3) an approximate outline of the areas draining to each outfall.

72. Respondent provided an updated site diagram dated August 12, 2014, which included additional items required by Part 5.1.2 of the 2008 MSGP. Therefore, Respondent did not comply with Part 5.1.2 of the 2008 MSGP from at least October 27, 2010 through August 11, 2014.

73. Part 2.1.2.9 of the 2008 MSGP requires training of all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of the permits. Part 5.1.5.1 of the

2008 MSGP required that a facility's SWPPP must include a schedule for all types of training, and Part 5.4 of the 2008 MSGP requires that a permittee must maintain records of all employee training conducted in accordance with the permit.

74. Section 6.0 of the CESPP requires annual training of employees involved in areas where industrial materials or activities are exposed to stormwater or are responsible for implementing activities necessary to meet the conditions of the stormwater permit, and that records and documentation of stormwater training will be maintained at the Facility.

75. Respondent did not maintain records of any employee stormwater training prior to October 2013. Therefore, Respondent did not comply with Parts 2.1.2.9 and 5.4 of the 2008 MSGP from at least March 2, 2010, through September 30, 2013.

76. Part 2.1 of the 2008 MSGP provides that control measures, including best management practices ("BMPs"), must be designed, installed, and implemented (in accordance with the selection and design considerations in Part 2.1.1) to meet the non-numeric effluent limits in Part 2.1.2, including, at Part 2.1.2.1, to "minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff by either locating these industrial materials and activities inside or protecting them with storm resistant coverings," and at Part 2.1.2.5, to "stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants."

77. During the Inspection, the EPA inspector observed the failure to install adequate control measures to minimize the exposure of material storage areas to rain, snow, snowmelt, and runoff, including the failure to minimize the exposure of "bad batch" processed cullet to

stormwater.

78. Respondent indicated to EPA that it created a covered area for the Facility's active "bad batch" hopper by December 31, 2013, and installed covers on other "bad batch" hoppers by February 28, 2014.

79. Therefore, Respondent did not comply with Part 2.1.2.1 of the 2008 MSGP from at least September 17, 2013 through February 27, 2014.

80. During the Inspection, the EPA inspector observed the failure to stabilize exposed areas and contain runoff using control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants, including observations of erosion, soil channeling, and small piles of glass cullet, gravel, sand, paper, limestone, and other debris near a gate in the northeast corner of the property and also near the pipe associated with outfall 003.

81. Respondent indicated to EPA that it installed hay bales as a temporary protective measure to prevent industrial debris from entering the adjacent wetland by October 31, 2013, installed a silt fence as a control measure to minimize the discharge of pollutants near the gate in the northeast corner of the property by August 15, 2014, and implemented cleanups of the areas by July 17, 2014, and planned to remove all glass cullet and other debris from the area near the pipe associated with outfall 003 and install a berm to prevent the material from entering the adjacent wetland by the fall of 2014.

82. Therefore, Respondent did not comply with Part 2.1.2.5 of the 2008 MSGP from at least September 17, 2013 through October 31, 2014.

83. From at least March 2, 2010 through October 31, 2014, each of Respondent's violations of the 2008 MSGP is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for each day on which the violation occurred or continued. In addition,

from at least March 2, 2010 through October 31, 2014, each and every day on which Respondent discharged stormwater from the Facility in violation of the terms and conditions of the 2008 MSGP is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

COUNT THREE: UNAUTHORIZED DISCHARGE OF UNTREATED WASTEWATER

84. Paragraphs 1 through 83 are incorporated herein by reference.

85. On certain dates better known to Respondent from at least January 2004 through November 2013, Respondent quenched and cooled hot glass cullet contaminated with oil and potentially other pollutants by spraying it with water, stored the wet cullet (also referred to as “in-house cullet”) in a large pile on an uncovered outdoor pad, and then allowed process wastewater from the wet cullet to flow across a paved surface and enter a drain which discharged into adjacent wetlands.

86. During the Inspection, the EPA inspector observed such process wastewater from the wet cullet flow across a paved surface and enter a drain which discharged into adjacent wetlands.

87. In addition, on at least twelve days from March 2010 through November 2013, storm events producing no less than one inch of rain within a 24-hour period occurred in the vicinity of the Facility, rain from which fell on the uncovered pile of wet cullet, combined with the process wastewater from the wet cullet pile, flowed across a paved surface, and entered a drain which discharged into adjacent wetlands.

88. The outfall through which the wastewater from the wet cullet pile flowed into the adjacent wetlands is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

89. Oil, solids, industrial waste, and other substances in the wastewater from the wet

cullet pile constitute “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

90. Respondent is not and has never been authorized to discharge untreated wastewater from the wet cullet pile to the adjacent wetlands under the terms and conditions of the 2008 NCCW GP, the 2008 MSGP, or the Industrial Sewer Permits.

91. Respondent’s conduct in allowing process wastewater contaminated with oil and potentially other pollutants to discharge into adjacent wetlands constituted “discharge of a pollutant” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

92. By discharging pollutants into wetlands adjacent to the Facility on certain dates better known to Respondent from at least March 2010 through November 2013 without authorization under a permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

93. Based upon the foregoing allegations and pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 75340 (Dec. 11, 2008); 78 Fed. Reg. 66643 (Nov. 6, 2013)), Complainant proposes that a Final Order assessing civil penalties be issued against Respondents of up to sixteen thousand dollars (\$16,000) per day for each day during which the violations continued, up to a maximum of one hundred and eighty-seven thousand five hundred dollars (\$187,500) for each Count in the Complaint.

94. Based on the foregoing allegations, EPA seeks to assess civil penalties for each

day of Count 1 (2008 NCCW GP violations), which was for a total of up to 1,331 days, Count 2 (2008 MSGP violations), which was for a total of up to 2,007 days, and Count 3 (unauthorized discharge violations), which was for a total of up to 13 days, up to a maximum of one hundred and eighty-seven thousand five hundred dollars (\$187,500) for each Count.

95. The 2008 NCCW GP violations alleged in Count 1 above represent significant violations of the CWA because of the extent and duration of the violations and because of the importance in ensuring that contaminated noncontact cooling water does not contribute to the impairment of water quality.

96. The 2008 MSGP violations/discharges of stormwater not in compliance with conditions in the 2008 MSGP, alleged in Count 2 above represent significant violations of the CWA because of the extent and duration of the violations and because of the importance in ensuring that contaminated stormwater runoff does not contribute to the impairment of water quality.

97. The unauthorized discharge violations alleged in Count 3 above represent significant violations of the CWA because of the extent and duration of the violations and because untreated and unmanaged process water from glass container manufacturing operations may contain pollutants that have the potential to stress aquatic animals and plants and have significant effects on water quality and the aquatic ecosystem.

98. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty, as required by the Consolidated Rules of Practice, taking into account the seriousness, nature, circumstances, extent, and gravity of the violation, or violations, and Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to Respondent resulting from the violations, Respondent's ability to pay the

proposed penalties, and such other matters as justice may require.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

99. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged raised in this Complaint and on the appropriateness of any proposed penalty. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

100. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at address listed below within thirty (30) days of receipt of the Complaint. To be entitled to a hearing, Respondent must include a request for a hearing in the Answer to the Complaint.

101. The original and one copy of each Answer, as well as a copy of all other documents which Respondents files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent file in this action, to Laura J. Berry, the attorney assigned to represent EPA and designated to receive service in this matter at:

Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-2)
Boston, Massachusetts 02109-3912


102. If Respondent fails to file a timely an Answer to this Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

103. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

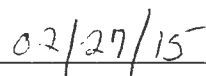
104. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

VII. CONTINUED COMPLIANCE OBLIGATION

105. Neither assessment nor payment of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), shall affect Respondent’s continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable requirements of Federal, State, or local law.



Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England



Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the matter of)	Docket No. CWA-01-2015-0030
ARDAGH GLASS INC.)	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
Milford, MA)	
Respondent.)	
Proposing to Assess a Civil Penalty)	
Under Section 309(g) of the Clean)	
Water Act, 33 U.S.C. § 1319(g))	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity to Request a Hearing has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested, with
copy of 40 C.F.R. Part 22:

Joseph R. Grewe
President
Ardagh Glass Inc.
1509 S. Macedonia Ave.
Muncie, IN 47307

Copy, by Certified Mail,
Return Receipt Requested:

John Kronopolus
Massachusetts Department of Environmental Protection,
Central Region
627 Main Street
Worcester, MA 01608

Dated: _____

3/2/15

Laura J. Berry

Laura J. Berry

Enforcement Counsel

U.S. Environmental Protection Agency, Region 1

5 Post Office Square, Suite 100 (OES04-2)

Boston, MA 02109-3912

Tel (617) 918-1148

Fax (617) 918-0148