

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for

Laura J. Berry  
Name of Case Attorney

8/10/15  
Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number CWA-01-2015-0030

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Ardagh Glass, Inc.  
1 National Street  
Milford, MA 01757

Total Dollar Amount of Receivable \$ 103,440 Due Date: 9/8/15

SEP due? Yes  No  Date Due 12/31/15

Installment Method (if applicable)

INSTALLMENTS OF:

- 1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

August 7, 2015

RECEIVED

AUG -7 2015

EPA ORC WS  
Office of Regional Hearing Clerk

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

Re: In re 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. Consent Agreement and Final Order; and
2. Certificate of Service.

Thank you for your attention to this matter.

Very truly yours,

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

Laura J. Berry  
Enforcement Counsel

Enclosures

cc: John W. Carroll, Esq. (Respondent's counsel)  
Joseph Canzano, OES, EPA Region 1

RECEIVED

AUG -7 2015

EPA ORC *WS*  
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

In the matter of	)	Docket No. CWA-01-2015-0030
ARDAGH GLASS INC.	)	<b>CONSENT AGREEMENT</b>
Milford, MA	)	<b>AND FINAL ORDER</b>
Respondent.	)	

This Consent Agreement and Final Order ("CAFO") is issued under the authority granted to the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. Part 22.

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding against Ardagh Glass Inc. ("Respondent" or "AGI") pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative complaint against Respondent on March 2, 2015 (the "Complaint").

2. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondent.

4. Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA has satisfied this requirement by providing public notice of, and

reasonable opportunity to comment on, the proposed issuance of such order.

## II. CONSENT AGREEMENT

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.

6. Respondent waives any defenses it may have as to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consents to the terms of this CAFO.

## III. WAIVER OF RIGHTS

7. Respondent hereby waives its right to request a hearing under Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and to any appeal of the Final Order in this matter under Section 309(g)(8)(B), 33 U.S.C. § 1319(g)(8)(B). Respondent consents to the issuance of the Final Order included with this Consent Agreement without further adjudication.

## IV. PENALTY

8. EPA proposes and Respondent consents to the assessment of a civil penalty in the amount of one hundred three thousand four hundred and forty dollars (\$103,440).

## V. PAYMENT TERMS

9. In agreeing to the penalty described in paragraph 8 above, EPA has taken into account the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

10. Within ten (10) days of the date this Agreement becomes final, Respondent shall submit a company, bank, cashier's, or certified check in the amount of \$103,440, payable to the order of "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of Ardagh Glass Inc.*, No. CWA-01-2015-0030) on the face of the check. The payment shall be mailed via regular U.S. Postal Service mail, to:

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

Or, Respondent may make payment by electronic funds transfer via:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

11. At the time of payment, Respondent shall simultaneously send notice of the payment and a copy of the check or electronic wire transfer confirmation to:

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

and

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

12. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by the Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such

amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpenalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

## VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

13. Respondent shall undertake the following Supplemental Environmental Projects (collectively, the "SEPs" or "Projects"), which the parties agree are intended to secure environmental and public health protection and benefits. The SEPs consist of (1) a project on the east side of the Facility, including the installation of two Stormceptor stormwater treatment units, a Cultec underground infiltration and detention basin, and associated pavement, catch basins, drains, piping, and other stormwater conveyances ("SEP 1"); (2) a project in the southwest area of the Facility, including the installation of a Hydroworks "HG4i" hydroguard separator unit and associated pavement, drains, piping, and other stormwater conveyances ("SEP 2"); and (3) the purchase and provision of firefighting equipment and materials ("SEP 3"). SEP 1 and SEP 2 provide for treatment of stormwater from the Facility prior to discharge to surface waters. SEP 3 will reduce runoff to surface waters resulting from firefighting events. Respondent has selected the Milford Fire Department as the "SEP Recipient" for SEP 3.

14. Respondent shall complete the SEPs according to the requirements and schedule set forth in Attachment 1 to this CAFO, which is incorporated herein by reference and is enforceable under this CAFO. The SEPs are projected to cost approximately \$121,700 in total. As described in this CAFO, "satisfactory completion" means (a) purchasing and installing the required stormwater treatment units and other associated infrastructure for SEP 1 by December

31, 2015; (b) purchasing and installing the required stormwater treatment units and other associated infrastructure for SEP 2 by May 31, 2016; (c) ensuring that, after installation, the equipment for SEP 1 and SEP 2 is in working order according to manufacturer instructions; (d) purchasing and delivering to the SEP Recipient the required materials and equipment for SEP 3 within 90 days of the date this Agreement becomes final; (e) ensuring that the equipment required by SEP 3 is in working order according to manufacturer instructions at the time of its delivery to the SEP Recipient; (f) spending approximately \$82,000 in total to purchase, install, and implement SEP 1; (g) spending approximately \$32,000 in total to purchase, install, and implement SEP 2; and (h) spending approximately \$7,700 in total to purchase and implement SEP 3.

15. **SEP Completion Report.** Respondent shall submit a SEP Completion Report within 60 days of completion of all three (3) Projects. The SEP Completion Report shall contain the following information for each SEP: (i) a detailed description of the SEP as implemented; (ii) a description of any implementation problems encountered and the solutions thereto; (iii) a description of the environmental and public health benefits resulting from implementation of the SEP; (iv) evidence of SEP completion (which may include but is not limited to photos, vendor invoices or receipts, and/or correspondence from the SEP Recipient); (v) a list of itemized costs for implementing the SEP; and (vi) certification by a corporate official of Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO and in accordance with Attachment 1.

16. Respondent agrees that failure to submit the report required by paragraph 15 shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to paragraph 20 below.

17. Respondent shall submit all notices, submissions, and reports required by this

CAFO to Laura J. Berry by email at Berry.LauraJ@epa.gov, to Joseph Canzano by email at Canzano.Joseph@epa.gov, and by First Class mail or any other commercial delivery service to EPA at the addresses set forth below:

Laura J. Berry, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: OES 04-2)  
Boston, MA 02109-3912

and

Joseph Canzano  
Stormwater Compliance Coordinator Engineer  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code OES04-4)  
Boston, Massachusetts 02109-3912

The submission will be deemed to be made upon tendering the delivery to a commercial delivery service for overnight delivery or upon the date of the postmark in the event of use by First Class mail.

18. After receipt of the SEP Completion Report described in paragraph 15 above, EPA will notify Respondent in writing:

- a. That EPA concludes that the SEPs have been completed satisfactorily;
- b. That EPA has determined that one or more of the Projects have not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP(s) or the SEP Completion Report; or
- c. That EPA has determined that the SEP(s) do not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with paragraph 20 herein.

19. If EPA notifies Respondent pursuant to paragraph 18.b above that the SEP(s) themselves or the SEP Completion Report do not comply with the requirements of this CAFO, Respondent shall make corrections to the SEP(s) and/or modify the SEP Completion Report in

accordance with the schedule specified by EPA. If EPA notifies Respondent that the SEP(s) themselves does not comply with the requirements of this CAFO, Respondent shall pay stipulated penalties in accordance with paragraph 20 herein.

20. Stipulated Penalties.

a. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to performance of the SEPs, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$200 for each day that Respondent is late; and

ii. For each SEP or any portion thereof that has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty of the dollar value of the portion of the SEP not satisfactorily completed times 1.25 plus interest from the date this Agreement becomes final. The definition of "satisfactory completion" is set out in paragraph 14. However, if Respondent spends less than approximately \$121,700 but otherwise satisfactorily completes the SEPs, Respondent shall only be required to pay a stipulated penalty in the amount equal to the difference between \$121,700 and the actual amount spent on the Projects.

b. The determination(s) of whether the SEPs have been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEPs shall be in the sole discretion of EPA.

c. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in

accordance with the provisions of paragraph 10. Notice shall be given in accordance with the provisions of paragraph 11. Interest and late charges shall be paid as stated in paragraph 12.

e. Payment of stipulated penalties shall be in addition to any other relief available under federal law.

f. EPA may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO.

21. With regard to the SEPs described herein and in Attachment 1, Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEPs is approximately \$121,700;

b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation, nor is Respondent required to perform the SEPs by agreement, grant, or as injunctive relief awarded in this or any other action in any forum;

c. That the SEPs are not projects that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

d. That Respondent has not received and will not receive credit for the SEPs in any other enforcement action;

e. That Respondent will not receive reimbursement for any portion of the SEPs from another person or entity;

f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs;

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs; and

h. That Respondent has inquired of the SEP Recipient whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as SEP 3 and has been informed by the SEP Recipient that it is not a party to such a transaction.

22. For the purposes of the certifications in paragraphs 21.g and 21.h, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, federal loan, federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

23. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent making reference to any of the SEPs under this CAFO from the date of Respondent’s execution of this CAFO shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, *In the matter of Ardagh Glass Inc.*, taken by the U.S. Environmental Protection Agency to enforce federal laws.”

## VII. GENERAL PROVISIONS

24. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, agents, servants, employees, successors, and assigns.

25. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

26. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint.

27. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

28. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

29. The Parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

30. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, performed the SEP(s), paid any stipulated penalties, and submitted the documentation required by this CAFO.

31. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of a Regional Judicial Officer.

32. Each undersigned representative of the Parties to this Consent Agreement certifies

that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

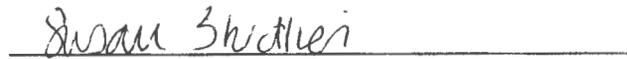
FOR ARDAGH GLASS INC.



Jim Warner  
Senior Vice President  
Risk Management and Government Affairs  
Ardagh Glass Inc.

Date: July 27, 2015

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



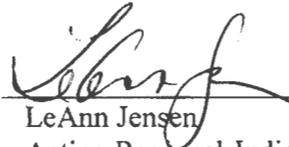
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

Date: 08/03/2015

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer.

Date: 8/6/15

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1

**ATTACHMENT 1**  
**SCOPE OF WORK**  
**FOR SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

Ardagh Glass Inc.  
Milford, Massachusetts

EPA Docket No. CWA-01-2015-0030

**I. Introduction**

As part of the settlement in the matter referenced above, Ardagh Glass Inc. (“Ardagh” or “Respondent”) has agreed to construct and implement two (2) stormwater treatment projects for the east side of the Facility (“SEP 1”) and for an area southwest of the facility (“SEP 2”) at its glass manufacturing facility located at 1 National Street in Milford, Massachusetts (the “Facility”). Respondent has also agreed to purchase and provide to the Milford Fire Department (the “SEP Recipient”) firefighting equipment and materials that will reduce runoff in firefighting response events (“SEP 3”). These Supplemental Environmental Projects (“SEPs”) are described in more detail below.

**II. Supplemental Environmental Projects**

1) Stormwater Treatment Project for the East Side of the Facility (SEP 1)

Ardagh shall construct and implement a stormwater treatment project that will reduce pollutants discharged in stormwater runoff from the east side of the Facility. Specifically, Ardagh shall install a paved roadway on the east side of the Facility from National Street to the existing paved area near the boiler room, a Cultec underground infiltration and detention basin structure, a new curb inlet, two (2) Stormceptor stormwater treatment units associated with the Cultec structure, and associated drains, catch basins, piping, and other stormwater conveyances. Stormwater discharging from the Cultec structure shall flow to and ultimately discharge from an outfall described as 002 in the Facility’s Contingency, Emergency, and Spill Prevention Plan, dated March 2015 (“2015 CESPP”).

SEP 1 is projected to cost approximately \$82,000. Ardagh shall complete installation and implementation of SEP 1 by December 31, 2015.

2) Stormwater Treatment Project for an Area Southwest of the Facility (SEP 2)

Ardagh shall construct and implement a stormwater treatment project that will reduce pollutants discharged in stormwater runoff from an area southwest of the Facility. Specifically, Ardagh shall install a Hydroworks “HG4i” unit on the site’s southern paved access roadway along with associated drains, piping, and other stormwater conveyances, and re-grade and pave the area around the Hydroworks unit to ensure proper drainage. Stormwater discharging from the Hydroworks unit shall flow to and ultimately discharge from an outfall described as 008 in the Facility’s 2015 CESPP.

SEP 2 is projected to cost approximately \$32,000. Ardagh shall complete installation and implementation of SEP 2 by May 31, 2016.

3) Firefighting Equipment and Materials Purchase

Ardagh shall purchase and provide to the SEP Recipient the following equipment and materials, and confirm that the equipment and materials are in good working order according to manufacturer instructions at the time of its delivery to the SEP Recipient:

- i. Thirty (30) five-gallon pails of National Foam Universal Gold 1%/3% Alcohol-Resistant Aqueous Film-Forming Foam (estimated cost: \$6,000); and
- ii. Six (6) Task Force Tips Foam Attachment nozzles (estimated cost: \$1,770).

SEP 3 is projected to cost approximately \$7,700. Ardagh shall complete purchase and delivery to the SEP Recipient of the equipment and materials for SEP 3 within 90 days of the date this Agreement becomes final.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

_____ )	)	Docket No. CWA-01-2015-0030
In the matter of )	)	
ARDAGH GLASS INC. )	)	<b>CONSET AGREEMENT</b>
Milford, MA )	)	<b>AND FINAL ORDER</b>
)	)	
Respondent. )	)	
_____ )	)	

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Consent Agreement and Final Order 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:

John W. Carroll, Esq.  
Pepper Hamilton LLP  
Suite 200  
100 Market Street  
P.O. Box 1181  
Harrisburg, PA 17108-1181

and

John Kronopolus  
Massachusetts Department of Environmental Protection,  
Central Region  
8 New Bond Street  
Worcester, MA 01606

Dated: 8/7/15

  
\_\_\_\_\_  
Laura I. 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