

FILED

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TX

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REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

Ardagh Glass, Inc.

RESPONDENT

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Consent Agreement and Final Order  
USEPA Docket No. RCRA-06-2021-0947

**CONSENT AGREEMENT AND FINAL ORDER**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement and Final Order (CAFO) is entered into by the United States Environmental Protection Agency, Region 6 (EPA or Complainant) and Respondent, Ardagh Glass, Inc. (Respondent or Ardagh Glass) and concerns the facility located at 4241 Highway 563, Simsboro, LA 71275 (Simsboro Facility).
2. Notice of this action has been given to the State of Louisiana, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO. This CAFO states a claim upon which relief may be granted.
4. Respondent explicitly waives any right to contest the allegations or to appeal the proposed final order contained in this CAFO and waives all defenses that have been raised or could have been raised to the claims set forth in the CAFO.
5. The CAFO resolves only those violations which are alleged herein.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the

assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.

## II. JURISDICTION

7. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2) and (3).
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO and agrees not to contest the validity of this CAFO or its terms or conditions.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a Corporation authorized to do business in the State of Louisiana.
10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Title 33 of the Louisiana Administrative Code (LAC) LAC 33: V.109<sup>1</sup>, [40 C.F.R. § 260.10].

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<sup>1</sup> On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 FR 3348). Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated November 2015, incorporated by reference under 40 C.F.R. § 272.951(c)(1)(i) effective on December 26, 2018. 83 Fed. Reg. 66143 (December 26, 2018); 40 C.F.R. 272.951: Louisiana State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Louisiana's published version. The corresponding C.F.R. citations are also provided.

11. Respondent owns or operates the Simsboro Facility.
12. Beginning in February 2020, EPA conducted a RCRA record review of the Simsboro Facility's activities as a generator of hazardous waste including a review of the information voluntarily provided to EPA by Respondent (the "Investigation").
13. During the Investigation, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, certain hazardous wastes which were listed on the manifests as having the following waste codes: D006 (Cadmium), D008 (Lead), D010 (Selenium).
14. The Simsboro Facility is a "facility" within the meaning of LAC 33: V.109, [40 C.F.R. § 260.10].
15. The waste stream identified in Paragraph 13 is "hazardous waste" as defined in LAC 33: V.4901.B, and 4903.E, [40 C.F.R. §§ 261.21, 261.22, 261.24, and 261.33].
16. Respondent is a "generator" of "hazardous waste" as those terms are defined in LAC 33: V.109, [40 C.F.R. § 260.10].
17. During the Investigation, EPA determined that the Ardagh Glass declared its generator status as a Very Small Quantity Generator (VSQG) on February 22, 2018 within the 2017 annual hazardous waste report cover letter.
18. From the Investigation, EPA determined that Respondent generated hazardous waste during 2019 in quantities that would qualify it as a Large Quantity Generator (LQG) of hazardous waste under LAC 33: V.108, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.

19. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in Title 33 of LAC Part V, Chapters 1 through 51, [40 C.F.R Part 262 and 270].
20. The EPA conferred with Respondent regarding the violations alleged herein and provided opportunities for Respondent to submit additional information or materials, which established that the Respondent acted in good faith and that the Respondent complied with the vast majority of applicable regulatory requirements.

#### IV. VIOLATIONS

##### *Claim 1: Notification Requirements*

21. The allegations in Paragraphs 1-20 are re-alleged and incorporated herein by reference.
22. Pursuant to LAC 33: V.1105.B (July 2018)<sup>2</sup> [42 U.S.C. § 6930(a)], a generator must notify the Office of Environmental Services within seven days if any of the information submitted in the application for the identification number changes.
23. As identified in Paragraph 18, Respondent generated hazardous waste above the threshold amount of a Very Small Quantity Generator during 2019.
24. Respondent did not file with EPA or Louisiana Office of Environmental Services an updated notification of its hazardous waste activities at the Simsboro Facility during 2019, in violation of LAC 33: V.1105.B (July 2018) [42 U.S.C. § 6930(a)].

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<sup>2</sup> The violations alleged in this CAFO took place prior to the adoption of the Generator Improvements Rule by Louisiana in 2020; citations in this CAFO are to a version of the Louisiana Administrative Code from July 2018, which reflects the Code in force during all relevant periods for this CAFO. Notably the provisions addressing generators of hazardous waste at this time were in Title 33, Chapter 11 rather than Chapter 10.

*Claim 2: Generator Requirements*

25. During periods of 2017 and 2019, Respondent accumulated waste generated at the facility prior to transport, constituting short term “storage” as defined in 33 LAC: V.109 (July 2018) [40 C.F.R. § 260.10].
26. During periods of 2017 and 2019, Respondent, as an entity generating waste in quantities sufficient to qualify as a Large Quantity Generator (LQG) and storing hazardous waste, was required to comply with the regulations for Treatment, Storage, and Disposal (TSD) facilities in LAC 33.V [40 C.F.R. § 270], or comply with the subset of those standards set forth in LAC 33.V.1109.E (July 2018) [40 C.F.R. 262.34(a)(4) (October 2016)] as conditions for exemption from the full TSD regulations for LQGs accumulating waste for less than 90-days.
27. During portions of 2017 and 2019, the Facility failed to meet these standards, in violation of one or more of the requirements for large quantity generators storing waste under LAC 33: V.1109.E [40 C.F.R. § 262.34] and LAC 33.V [40 C.F.R. § 270].

**V. COMPLIANCE ORDER**

28. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:
  - A. Respondent shall certify that it has assessed all solid waste streams generated by the Simsboro Facility, determined accurate waste codes for identified solid waste streams, and has developed and implemented standard operating procedures (“SOPs”) to ensure that Respondent is operating the Simsboro Facility in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to,

procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) transporting and disposing of hazardous waste;

B. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.

29. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Enforcement and Compliance Assurance Division (ECAD)  
ATTN: Adolphus Talton  
Dallas, Texas 75270-2102

Where possible, notice shall be sent electronically by email or facsimile to Adolphus Talton, respectively at [talton.adolphus@epa.gov](mailto:talton.adolphus@epa.gov) or at 214-665-6651.

## **VI. TERMS OF SETTLEMENT**

### **A. Penalty Provisions**

30. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon the

seriousness of the alleged violations, it is ordered that Respondent be assessed a civil penalty of thirty-seven thousand, sixty-three dollars and no cents (\$37,063.00).

31. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

32. The following are Respondent's options for transmitting the penalties: Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted to:

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

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

The case name and docket number (**In the Matter of Ardagh Glass, Inc., Docket No. RCRA-06-2021-0947**) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

33. The Respondent shall send a simultaneous notice of such payment to the following:



Lorena S. Vaughn  
Regional Hearing Clerk (ORC)  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2102

U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Enforcement and Compliance Assurance Division (ECAD)  
ATTN: Adolphus Talton  
Dallas, Texas 75270-2102

34. Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA.
35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
36. Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). The EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is



delinquent.31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**B. Costs**

37. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

**C. Termination and Satisfaction**

38. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section V (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

**D. Effective Date of Settlement**

39. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

Ardagh Glass, Inc.  
RCRA-06-2021-0947

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**

Ardagh Glass, Inc.



Richard M. Tomicek, Vice President Environmental  
Compliance and Sustainability  
Ardagh Glass, Inc.

**FOR THE COMPLAINANT:**



Digitally signed by Seager, Cheryl  
DN: cn=Seager, Cheryl,  
email=Seager.Cheryl@epa.gov  
Date: 2022.01.26 17:14:10 -06'00'

Cheryl T. Seager  
Director  
Enforcement and  
Compliance Assurance Division  
U. S. EPA, Region 6

## FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

**THOMAS RUCKI**

Digitally signed by THOMAS RUCKI  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=THOMAS RUCKI,  
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Date: 2022.02.07 09:43:01 -06'00'

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Thomas Rucki  
Regional Judicial Officer

Ardagh Glass, Inc.  
RCRA-06-2021-0947

### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Taylor.Nathan@epa.gov

Talton.Adolphus@epa.gov

Copy via Email to Respondent:

Richard.tomicek@ardaghtgroup.com

NATHAN  
TAYLOR

Digitally signed by NATHAN TAYLOR  
DN: cn=NATHAN TAYLOR, ou=Environmental Protection Agency,  
o=U.S. Government,  
c=US

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Nathan Taylor  
Assistant Regional Counsel  
EPA Region 6