

**BEFORE THE ENVIRONMENTAL PROTECTION BOARD
CITY OF JACKSONVILLE**

CITY OF JACKSONVILLE)	
ENVIRONMENTAL QUALITY DIVISION)	
)	
)	
)	
)	Petitioner,
vs.)	SECOND AMENDED
)	CEASE AND DESIST CITATION
)	AP-13-07
ARDAGH GLASS INC.,)	
)	
)	
Respondent.)	

CONSENT ORDER WITH COMPLIANCE PLAN

This Consent Order with Compliance Plan is made and entered into between the City of Jacksonville, Neighborhoods Department, and Ardagh Glass Inc. ("Respondent").

1. The City of Jacksonville, Neighborhoods Department ("the Department"), through its Environmental Quality Division (EQD), enforces Chapter 360 and 362, City of Jacksonville Ordinance Code ("Ordinance Code") and Jacksonville Environmental Protection Board Rule 2 which, among other things, adopts and incorporates by reference state and federal rules governing stationary sources of air pollution ("rules").

2. The Respondent is located at 2121 Huron Street, Jacksonville, Florida. The Respondent owns and operates a glass manufacturing facility at this location.

3. On February 19 and 20, 2013, and February 20, 2013, annual compliance testing of Furnace 3 and 4 was conducted pursuant to the approved Test Plan on file with the EQD. However, due to an error in the notification letter, the testing was required to be renoticed and redone.

4. On April 1, 2013, Respondent notified EQD in writing of certain instances of alleged noncompliance with the terms and conditions of DEP Permit No. 0310005-006-AV and DEP Permit No. 0310005-012-AC.

5. On April 29, 2013, Respondent notified EQD of its intent to perform additional compliance testing on Furnaces 3 and 4, as required by the approved Test Plan on file with the EQD.

6. On May 7, 2013, based on Respondent's April 1 notification letter, the Department issued Citation AP-13-07 to the Respondent for failure to conduct compliance

testing while processing the minimum percentage of cullet used during normal operations in violation of DEP Permit No. 0310005-006-AV, Test Methods and Procedures, Specific Conditions 13 and 14, pages 7 of 10 and 8 of 10, and DEP Permit No. 0310005-012-AC, Test Methods and Procedures, Specific Conditions 10 and 11, page 9 of 10.

7. On May 10, 2013, Respondent issued a written response to the Cease and Desist Citation as required by the Citation.

8. On May 15, 2013, Respondent and EQD met to discuss the Cease and Desist Citation and all outstanding issues of alleged noncompliance or potential noncompliance of which Respondent was aware.

9. On May 15 and 16, 2013, Respondent conducted compliance testing of Furnaces 3 and 4 pursuant to the approved Test Plan on file with the EQD. The preliminary test results indicated exceedances of the Furnace 3 permit limits for PM, SO₂, and visible emissions/opacity.

10. Respondent provided EQD with various documents pursuant to EQD request following the meeting.

11. On May 23, 2013 Respondent requested waiver of the 15 day notice requirement and provided notice of its intent to conduct additional compliance testing of Furnace 3 and 4, in light of the preliminary performance test results on May 15-16, 2013.

12. On May 30-31, 2013, Respondent conducted compliance testing of Furnace 3 and 4 as well as, pursuant to EQD request, voluntarily conducted an Operating Conditions Verification assessment, to verify operating conditions during performance testing.

13. On June 7, 2013, the Department issued an Amended Citation AP-13-07 to the Respondent that, in addition to the items identified in paragraph 6, alleged (1) a violation of the allowable visible emissions/opacity limit for both Furnaces 3 and 4 based on measurements taken by the EQD staff on April 25, 2013 and (2) construction, modification or expansion of an emissions source without a permit, based on disclosures made by Respondent at the May 15, 2013, meeting regarding burner tip reconfigurations accomplished at both furnaces.

14. Also on June 7, 2013, Respondent submitted to EQD a Comprehensive Compliance/Deviations Report Summary (June 7 Report) that outlined all known instances of alleged noncompliance or potential noncompliance at the Jacksonville Facility.

15. Respondent provided a written response to the Amended Citation to EQD on June 12, 2013, as required by the Citation.

16. On June 17, 2013, Respondent provided EQD with requested additional information concerning good faith voluntary compliance steps Respondent outlined in the June 7 Report.

17. On June 28, 2013, Respondent submitted to EQD the performance test reports for the aforementioned performance tests as well as the referenced Operating Conditions Report verifying operating conditions during the performance tests.

18. On July 12, 2013, Respondent provided EQD with additional requested information regarding the matters outlined in the June 7 Report.

19. On July 18, 2013, the Department issued its Second Amended Citation AP-13-07. The Second Amended Cease and Desist Citation addresses all matters previously disclosed and discussed between Respondent and EQD, including the prior allegations set forth in the citations referenced in paragraphs 6 and 13, as well as alleged violations of emission limits for Furnace 3 2013 testing, relating to PM, opacity, and SO₂ readings for Furnace 3 during the May 15-16 performance testing.

20. On July 25, 2013, Respondent provided a written response to the Second Amended Citation as required by the Citation.

21. On July 19, 2013, Respondent submitted a draft permit application to the Florida Department of Environmental Protection (FDEP) that addressed the issue of modification/expansion of an emissions source without a permit (burner tip reconfigurations) with the Department. On July 26, 2013, the EQD was provided a copy of that draft permit application.

22. On August 12, 2013, Respondent provided EQD with additional requested information concerning the matters outlined in the Second Amended Citation.

23. On September 6, 2013, Respondent submitted additional requested information to EQD.

24. Also on September 6, 2013, Respondent submitted a request for permit determination/permit application to FDEP; EQD was provided with a copy of the application.

25. On October 1, 2013, Respondent representatives and EQD staff met to discuss settlement and potential penalty amounts. Subsequent correspondence and discussions occurred between Respondent and EQD in October regarding the appropriateness of the penalty amount and the possibility of one or more supplemental environmental project(s) being undertaken in lieu of payment of a portion of the penalty.

26. On October 14, 2013, Respondent submitted a letter to EQD in response to the October 1 meeting and in response to information requests from the EQD. In response to that letter, EQD indicated that, notwithstanding the merger and acquisition of Anchor Glass Container Corporation by The Ardagh Group in August 2012, EQD intended to hold Respondent responsible for alleged noncompliance events arising prior to August 2012 in accordance with the City of Jacksonville Office of General Counsel's legal interpretation of Section 259 of the Delaware General Corporation Law which governs the merger and acquisition of the corporations, the U.S. Supreme Court's decision in *Bestfoods v. USA*, 118 S.Ct. 1876 (1998), and due to the continuity in corporate officers between Anchor and the successor merged corporation, Ardagh Glass Inc. EQD also indicated that, because of prior alleged noncompliance events by Anchor Glass Container Corporation arising prior to August 2012, EQD was not going to reduce the gravity portion of the penalty amount to reflect Respondent's admittedly good faith efforts subsequent to the merger to comply following Respondent's discovery and disclosure. EQD concurred based on the October 14 submittal that Respondent had realized no economic benefit for any of the alleged noncompliance events.

27. The Respondent and the Department have met in an effort to resolve their disputes as to compliance issues and the alleged violations of City of Jacksonville ordinances and rules. The Respondent has also been in contact with the FDEP concerning this matter.

28. The Respondent and the Department have agreed to enter into this Consent Order with Compliance Plan in order to expeditiously address compliance issues without litigation and its attendant costs, delays, and risks.

Having reached a resolution of this matter without any admission of liability or wrongdoing by the Respondent, the parties agree, and it is

ORDERED:

1. The Respondent shall operate the glass manufacturing facility identified in paragraph 2 above in accordance with all local, state, and federal rules and regulations.

2. Respondent shall implement two Supplemental Environmental Projects (SEPs) in partial satisfaction of the matters addressed in the Department's Second Amended Cease and Desist Citation AP-13-07. The SEPs as originally proposed and subsequently clarified by the Respondent are attached and incorporated by reference into this Consent Order with Compliance Plan. Completion of the SEPs shall not constitute nor be construed as an admission of wrongdoing or liability for any matters raised in Second Amended Cease and Desist Citation AP-13-07.

3. Respondent shall perform Supplemental Environmental Projects (SEPs) to:

A. Install Continuous Emissions Monitoring Systems (CEMS) for NO_x and SO₂ on both Furnace 3 and Furnace 4; and

- B. Install an electronic weighed conveyor system (ECWS) that will precisely weigh cullet charged to both furnace 3 and 4 from the return system(s).

SEP Scope of Work:	Complete by:
Submit permit applications to FDEP and provide a copy of the permit application to install CEMs for NO _x and SO ₂ on Furnace 3 & 4 and complete installation of CEMs - Proposed SEP cost \$390,600	Within seven (7) months of approval of the Consent Order with Compliance Plan by EPB (timeframe does not include the 45 days to submit the calibration testing report)
Install ECWS on Furnace 3 & 4 - Proposed SEP cost \$175,000	Within six (six) months of approval of the Consent Order with Compliance Plan by EPB

4. The Respondent has filed with FDEP a construction permit application associated with the burner tip reconfigurations for Furnace 3 and Furnace 4 to resolve item 1 of the Second Amended Cease and Desist Citation AP-13-07. Respondent shall provide a copy of the construction permit once received to EQD, 214 North Hogan Street, Fifth Floor, Jacksonville, Florida 32202 to the attention of Dana Brown.

5. The Respondent shall submit a monthly status report for the corrective actions and SEPs beginning January 2, 2014, and thereafter by the first of each month until the SEPs are complete. The final status report shall include the actual cost of the completed SEPs. If, in the reasonable discretion of the Department, the actual cost of implementing the SEPs is less than 90% of the costs indicated in the attached documentation, the Department may present a modification of this Consent Order with Compliance Plan to reflect the actual cost and a corresponding adjustment of the penalty payment in Paragraph 8 at the next scheduled meeting of the full Environmental Protection Board. All status reports for the project shall be provided by electronic mail to Dana L. Brown, Environmental Enforcement Administrator, EQD, at dlbrown@coj.net.

6. If Respondent is prevented in the performance of any act required under Paragraph 3 above by reason of act of God, fire, flood, or other natural disaster, malicious injury, strikes, lock-outs, or other labor troubles, riots, insurrection, war or other reason not the fault of the Respondent or that could not be avoided by Respondent using due care, then Respondent shall give the Department prompt written notice of the occurrence of any such condition, the nature thereof, and the extent to which the Respondent will be unable to perform its obligations hereunder. The Department agrees to present the matter for modification of this Consent Order with Compliance Plan at the next scheduled meeting of the full Environmental

Protection Board to extend the time for performance for a period equivalent to the expected period of such delay. Respondent further agrees to use all reasonable efforts to correct the condition as quickly as possible and to give the Department prompt written notice when it is again fully able to perform its obligations.

7. Except as specified in Paragraph 6, pursuant to Section 360.306, Ordinance Code, if the Respondent fails to meet the deadlines specified in paragraph 3 above, then the Director of the Department may impose a civil fine of up to \$500 for each occurrence of alleged noncompliance with this Consent Order with Compliance Plan. Each day of non-compliance shall constitute a separate offense. The civil fine shall be due within seven (7) days of written notification to the Respondent. The check shall be made payable to the City of Jacksonville Environmental Protection Trust Fund and mailed to EQD, 214 North Hogan Street, Fifth Floor, Jacksonville, Florida 32202 to the attention of Dana L. Brown.

8. Respondent shall pay \$151,387.50 (25% of penalty gravity component) within 30 days of execution of this Consent Order with Compliance Plan and approval of this agreement by the City of Jacksonville Environmental Protection Board. The check shall be made payable to the City of Jacksonville Environmental Protection Trust Fund and mailed to EQD, 214 North Hogan Street, Fifth Floor, Jacksonville, Florida 32202 to the attention of Dana L. Brown. Such payment shall not constitute nor be construed as an admission of wrongdoing or liability for any matters raised in Second Amended Cease and Desist Citation AP-13-07. In recognition of the current Federal Trade Commission ("FTC") litigation, should the revised divestiture package submitted to the FTC as part of a settlement package not be approved by the FTC and the Jacksonville facility is sold, the entire original proposed penalty of \$605,550 shall be due and payable immediately by Respondent upon the closing date of any sale of the facility, and the SEPs shall no longer be required to be performed. If either of the two SEP projects are completed prior to the sale of the Jacksonville facility, the penalty amount due and payable shall be mitigated by the project costs for that SEP project originally credited against the penalty.

9. This Consent Order with Compliance Plan fully resolves all issues raised in the Department's Second Amended Cease and Desist Citation AP-13-07 regarding the matters addressed herein. The Department reserves the right to take appropriate enforcement action against Respondent for any future violation of the Ordinance Code or rules. Respondent reserves its right to contest any such enforcement action in accordance with applicable law. Compliance with this Consent Order with Compliance Plan shall not constitute, nor be construed as, an admission of wrongdoing or liability as to any matters raised in Second Amended Cease and Desist Citation AP-13-07.

10. Notwithstanding paragraph 7 above, a violation of the terms of this Consent Order with Compliance Plan may subject the Respondent to judicial imposition of civil penalties of up to \$10,000 per violation per day.

11. The Department, for and in consideration of the timely performance by the Respondent of the obligation agreed to in this Consent Order with Compliance Plan, hereby waives any rights to seek administrative or judicial imposition of civil and administrative action, complaints, citations, causes of action, and claims arising from the Department's Second

Amended Cease and Desist Citation AP-13-07. The Respondent waives its right to an administrative hearing on, or judicial review of, the terms of this Consent Order with Compliance Plan.

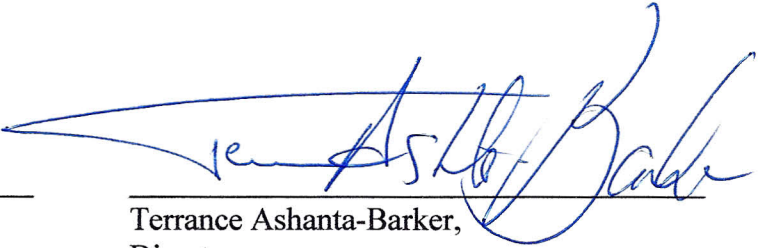
12. If this Consent Order with Compliance Plan is not approved by the City of Jacksonville Environmental Protection Board, this Consent Order with Compliance Plan shall be of no force or effect.

13. The provisions of this Consent Order with Compliance Plan shall apply to and be binding upon the parties, their officers, directors, agents, servants, employees, successors, and assigns and all persons, firms and corporations acting under, through or for them and upon those persons, firms, and corporations in active concert or participation with them.

14. Entry of this Consent Order with Compliance Plan does not relieve the Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

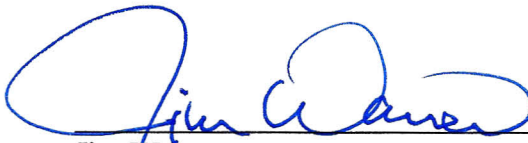
**CITY OF JACKSONVILLE
NEIGHBORHOODS DEPARTMENT**

December 9, 2013
Date


Terrance Ashanta-Barker,
Director

ARDAGH GLASS INC.

December 9, 2013
Date


Jim Warner,
Secretary and General Counsel

ORDER

I hereby certify that the foregoing document was adopted by order of the Environmental Protection Board of the City of Jacksonville this 9th day of DECEMBER, 2013.



Steve Jenkins, Chairman
Environmental Protection Board

Kevin Mackey
Ardagh Group
Batch and Furnace
2121 Huron Street
Jacksonville, Florida 32254
(M) 904 402 3089

Ardagh Glass -- Jacksonville Proposed SEPs

\$565,600 DBB 4PLW

Ardagh NA Glass is proposing two SEPs at a total cost of ~~\$568,600~~ to mitigate the penalty assessed under the "Cease and Desist Citation AP 13-07". The SEPs that will improve compliance and prevent/minimize pollution are:

- 4PLW
not included
DBB 3/20/07
- 1. CEMS for NO_x and SO₂ for both furnaces:** Ardagh will install a Continuous Emissions Monitoring System (CEMS) that will monitor NO_x and SO₂ emissions from both furnaces. The CEMs units will provide real-time feedback concerning SO₂ and NO_x emissions ensuring that plant compliance with permit limits is continuously monitored. As part of this project, we will also install a small shed (building) to house equipment associated with the CEMs units. We have obtained a proposed cost of \$352,600 to implement the CEMS. We also have obtained a proposed cost of \$31,000 to conduct the required Annual RATA (Relative Accuracy Test Audit) and Quarterly Audits required for CEMS, as well as a proposed estimated annual cost of \$7,000 for required maintenance and ~~\$3,000 for the permit modification~~. Costs for one year of RATA, one year of Quarterly Audits, ~~\$390,600~~ one year of maintenance and cost of the permit modification are included in the total cost of ~~\$393,600~~ for the CEMS SEP. See attached quote from Koogler and Associates. This project can be completed within one year of the execution date, assuming timely receipt of any needed permits. 4PLW
 - 2. Provide ability to weigh cullet and record data electronically:** Ardagh will install an electronic weighed conveyor system that will precisely weigh cullet and all other raw materials that are charged to both furnace 3 and 4 from all sources. This will eliminate the ability to charge unweighed cullet or any other raw material to the furnaces. A system for weighing all of the raw materials in the batch house is already in place; this additional electronic weighed conveyor system would ensure that all materials, not just the materials in the batch house, will be weighed before being charged to the furnaces. The weights will be downloaded into the current batch material tracking software system. This will improve plant compliance with permit language that necessitates weighing materials to determine raw material process weight. We have obtained a proposed cost of \$175,000 to install this capability on both furnaces. This project can be completed within nine months of the execution date.