



October 15, 2019

*Protecting and
Preserving
Puget Sound*

Anthony Wright
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130 Nickerson Street,
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Sent via email Anthony.Wright@kingcounty.gov

P 206.297.7002
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RE: Ardagh Glass Inc. Facility at 5801 East Marginal Way South
Seattle WA 98134

www.pugetsoundkeeper.org

Greetings Mr. Wright,

Puget Soundkeeper Alliance (Soundkeeper) is a water quality focused grassroots community organization founded in 1984. Soundkeeper's mission is to protect and preserve the waters of Puget Sound. Representing over 3,000 members, supporters, volunteers and activists, Soundkeeper works to meaningfully decrease pollutants reaching the Sound by actively monitoring Puget Sound water quality, enforcing clean water laws, improving policies and regulations, preventing pollution and cleaning up waterways. Soundkeeper is profoundly concerned with the health of the Puget Sound and surrounding waterways.

Over the past 25 years, Soundkeeper has brought well over 200 legal actions on behalf of impacted communities to improve and enforce clean water laws. Soundkeeper's legal program has a strong track record of success, and has assisted in securing some of the strongest National Pollution Discharge Elimination System (NPDES) permits in the country. The result of this work has been to drive innovation in stormwater and wastewater treatment technology by compelling compliance with standards to protect marine and fresh water ecosystems and human health.

Soundkeeper works closely with community partners including Duwamish River Cleanup Coalition on protecting and improving the health of the river and engaging and supporting the well-being of the communities that surround it.

The intent of this letter is to daylight the long history of water pollution problems and violations at the Ardagh Glass facility on E. Marginal Way S, and request that King County please consider these facts as it evaluates how to engage with the facility moving forward.



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What follows is not an exhaustive account of each and every Clean Water Act violation committed by Ardagh and its predecessor at this site, but rather an initial assessment based on limited information now available that is offered to the County purely for demonstrative purposes. Soundkeeper reserves every right to add, revise, clarify and expand upon the following facts as necessary to accomplish its future endeavors to address water pollution from this site.

I. Long History of Water Pollution Problems & Noncompliance

Ardagh Glass operates on a 17.2 acre E. Marginal Way S. facility that has been permitted to discharge industrial stormwater to the Duwamish River since 1992.

In 2006, Soundkeeper initiated legal action against prior owner Saint Gobain Containers Inc for ongoing violations of the Clean Water Act and the NPDES Permit SO3001134. The result was a commitment from the company to pay \$45,000 to two local community-based groups for environmental benefit projects, and comply with its clean water permits moving forward.

We generally find that our lawsuits to enforce NPDES permits result in a “wake-up call” for a company, forcing on-the-ground change, improving managing awareness of permit requirements, and resulting a shift in company focus to ensure that violations do not recur. It is monumentally disappointing to follow the company’s pollution trajectory to today, and discover that the 2006 action apparently did not send a strong enough message that the community will not stand for the company’s utter disregard for basic water pollution laws. In fact, Soundkeeper’s enforcement action at this site 13 years ago was apparently just the beginning.

In 2012, the U.S. Environmental Protection Agency (EPA) conducted a facility inspection wherein it documented various violations of the facility’s NPDES permit, including failure to sample, failure to implement basic operational source control best management practices (BMPs) and failure to fulfill record keeping obligations. Noting the site’s history of discharging high levels of zinc, copper and turbidity, in a 2014 Consent Agreement and Final Order, EPA ordered Saint Gobain to pay a \$86,000 penalty for these violations. Common sense supports that if Soundkeeper’s lawsuit didn’t leave a lasting impression on the company, then EPA’s action certainly should have.

In April 2014, Saint Gobain Containers Inc (Verallia) was purchased by Ardagh Glass Incorporated. Importantly, EPA’s 2014 order specifically applied to Saint Gobain’s successors. And, Ardagh assumed identical permit coverage from Saint Gobain, under the same (updated) NPDES Permit number WAR001134. Regardless of any changes in management or leadership that may have accompanied the purchase, Ardagh would have been required to immediately familiarize itself with the permit requirements, and



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assume and/or develop a Stormwater Pollution Prevention Plan (Permit condition S3) identifying the facility's pollution sources and BMPs. Here, where Ecology documents in 2015 were addressed to the same Plant Manager who signed the 2014 EPA order, there appears to have been some leadership continuity. In any event, the change in ownership in no way excuses or warrants leniency or tolling for any NPDES compliance issues.

I. Total Suspended Solids (TSS) Violations

Over the past 5 years (at least), Ardagh has demonstrated a recurring and pervasive problem with discharging excess TSS.

TSS is the dry-weight of suspended particles, that are not dissolved, in water. TSS is listed as a conventional pollutant in the U.S. Clean Water Act. Suspended solids carried in stormwater cause a range of harmful effects in a receiving water, particularly when the waterbody is a designated as a Puget Sound Sediment Cleanup Site (like the Duwamish River). High concentrations of particulate matter impact productivity and habitat, and also provide attachment places for pollutants including metals and bacteria. Sediment is vital to the health of marine and freshwater environments because it is where aquatic animals such as crabs and clams live. Contaminated sediment can harm the animals that live in, and consequently harm the animals that depend on sediment-dwellers for food.

In January 2017, each of Ardagh's excessive TSS discharges began to constitute an *effluent limit violation* because a permit condition intended to protect discharges to 303(d)-listed waterways (including the Duwamish River) became effective. Permit condition S6.C.1.c and Table 6.

Despite having had years of notice that stormwater from the site was exceeding acceptable levels of TSS, in 2017 Ardagh still had not implemented BMPs adequate to prevent these solids from washing into the Duwamish River.

Ardagh has since continued to routinely exceed the TSS effluent limit – throughout 2017, 2018 and today (2019). Ecology sent Ardagh a warning letter in November 2018 articulating that the company had violated the TSS effluent limit no less than 17 times just since early 2017. Then, in early 2019, Ecology documented that Ardagh had violated the TSS limit an additional 9 times since the 2018 letter. By Soundkeeper's count, it appears that Ardagh has again violated the TSS effluent limit an additional 3 times since Ecology's March 2019 count.

Importantly, treatment or removal of TSS from industrial stormwater is typically not complicated. Suspended particles are often easily filtered out by use of various apparatus.



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As noted below, Ardagh has undertaken some insipid efforts to curtail stormwater pollution – however, despite the broad availability of high quality low cost technologies available to remove pollutants include TSS from industrial stormwater, none of Ardagh’s half measure BMP updates have been even remotely sufficient to address its TSS violations.

II. Level Three Treatment System Requirements

The NPDES permit regulating Ardagh, Washington’s Industrial Stormwater General Permit, provides an adaptive management approach to reducing pollutants in stormwater. Permit condition S5 contains numeric benchmarks for certain pollutants, which, if exceeded, trigger corrective actions required by permit condition S8.

The permit is designed to provide facilities with a reasonable opportunity to first use operational or structural BMPs to reduce pollutants in their stormwater. For some sites, with minimal pollutant generation, and sustained and aggressive operational and structural BMPs, this works. However, nearly every industrial facilities of the size, type, activity level, and pollutant-generating capability as Ardagh has already been legally required to take the step of installing advanced stormwater treatment systems in order to achieve basic compliance with this permit. These permit requirements are not new or novel, and leniency certainly should not be granted to a facility that has been covered for as long as Ardagh.

Ardagh has triggered a “Level Three” requirement to install stormwater treatment (permit S8.D) for copper, zinc and turbidity *every single year since at least 2014*.¹

When a “Level Three” requirement is triggered, permit condition S8.D requires submission of an engineering report to Ecology by May 15th and installation of treatment BMPs no later than Sept 30th of the following year..

In August 2015, WA Department of Ecology (Ecology) approved an engineering report submitted by Ardagh in May 2014 (with addendums dated December 2014 and July 2015) outlining a plan to install minimal pre-treatment² and treatment BMPs onsite, including a clarifier, roof drain cisterns and catch basin inserts. Ardagh completed these updates in 2016.

However, despite triggering new “Level Three” requirements annually, Ardagh has not since submitted any engineering reports or implemented any new treatment BMPs.

¹ Ardagh’s 2016 “Level Three” was triggered for copper and turbidity only.

² Catchbasin inserts are commonly accepted as a first-line *pretreatment* measure – not a stand alone treatment BMP and very rarely a solution in and of themselves.



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Although Ardagh updated the media in its catchbasin filters in May 2018, this treatment BMP improvement is not a new “Level Three” and does not fulfill the requirements of S8.D. And, based on pollutant levels documented since, the new media is not successful at addressing the problem.

Despite having had at least 15 years of first-hand experience with stormwater pollution problems, the company has successfully dodged numerous and repeated obligations to install a true and effective stormwater treatment system. During this time, Ardagh has enjoyed a professional advantage and saved substantial cost by externalizing their true cost of doing business on those who use and enjoy the Duwamish River. This, all while numerous other industrial facilities along the Duwamish River, including some with far fewer resources than the Ardagh Group corporate family, have installed advanced stormwater treatment systems to curtail and cease their stormwater pollution.

Soundkeeper is disappointed with Ardagh’s refusal, thus far, to comply with legal requirements in the permit and take their stormwater pollution seriously enough to follow suite.

III. Violations Documented During Recent Onsite Inspections

In November 2018, Ecology inspected Ardagh’s facility and documented an extensive list of permit violations including:

- Failure to maintain stormwater drainage and treatment BMPs as required by permit condition S3.B.4.b.i.3
- Failure to immediately clean up spills and leaks as required by permit condition S3.B.4.b.i.3.d
- Failure to properly manage wastewater by allowing concrete truck washwater to commingle with stormwater and discharge to the river in violation of permit condition S3.B.4.b.i.7.ii

In March 2019, Ecology inspected Ardagh’s facility and, *again*, documented *persistent* permit violations including:

- Failure to immediately clean up spills and leaks as required by permit condition S3.B.4.b.i.3.d
- TSS effluent limit violations of permit condition S9.C.1
- Failure to provide timely notification of permit violations associated with TSS effluent limit exceedances in violation of permit condition S9.E.1
- Failure to address dust, sediment and debris onsite as required by permit condition S10.C

In response, Ardagh undertook several actions to improve operations including replacing catch basin inserts, replacing a failed pipe, and purchasing a sweeper and sweeping more frequently.



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Having been notified by Ecology that a “Level Three” treatment plan was nonetheless required, in May 2019, Ardagh submitted to Ecology a permit modification request, asking for a deadline extension of one year – from September 2019 to September 2020. Although Ardagh’s deadline extension request fails to provide the technical basis outlining why installation by the deadline was “not feasible”, as required by permit condition S8.D.5, it did note several recent onsite efforts and expressed the apparent interest in more time “to secure capital funding” and undertake “studies, designs and/or permitting”. Ecology visited the site again in July 2019 to verify that aspects of prior concerns had been addressed, and then, apparently without applying much scrutiny or considering the big picture reality that Ardagh had triggered “Level Three’s without completing them for several straight years, approved Ardagh’s extension request.

IV. Environmental Injustice and Inequity

According to Ardagh Group’s 2018 Annual Report, the company, which is a global leader in glass and metal packaging solutions and operates 100+ glass and metal manufacturing facilities in 22 countries and owns over \$10 billion in assets, has enjoyed steady increases in revenue over the last three years.

Corporate refusal to comply with pollution discharge requirements amounts to externalization of the true costs of doing business on the community – in particular, those who use and enjoy a waterway, including residents who recreate on and fish on the Duwamish River.

Environmental injustice exists because of the disproportionate number of environmental burdens in certain communities. It is well known that residents of Georgetown and South Park, as well as community members who fish from the Duwamish River, bear a disproportionate burden of our region’s industrial activity and industrial pollution. The Duwamish Valley is racially and culturally diverse, with higher percentages of recent immigrants and non-English speaking community members. Unacceptably, Duwamish Valley residents tend to experience more poverty and illness. In fact, Georgetown and South Park residents have up to a 13 year shorter life expectancy (at birth) than wealthier parts of Seattle.³ Environmental exposures, including air pollution, industrial discharges and contaminated sites are among the highest in the city. In the 98108 zip code, childhood asthma hospitalization rates are more than twice King County’s average, and rates of lung cancer, diabetes, and death from stroke are all even higher.⁴

³ <http://justthehealthaction.org/wp-content/uploads/2013/03/Duwamish-Valley-Cumulative-Health-Impacts-Analysis-Seattle-WA.pdf>

⁴ https://deohs.washington.edu/sites/default/files/research/HIA_final_report_10-15-13_low_res.pdf



Puget Soundkeeper refuses to stand idly by while industrial polluters are seemingly let off the hook by government agencies – especially where the pollution is disproportionately harming communities with lower income levels, and more residents of color.

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Ongoing sources of water and sediment pollution to the Duwamish River frustrate the ongoing Superfund cleanup of the Lower Duwamish Waterway, which specifically seeks to reduce risks to human and environmental health by improving the quality of sediment in the riverbed. The cleanup plan will not succeed until we tighten the faucet by getting serious about ongoing source control. Allowing sources of water pollution to continue to flow with impunity is not only bad for the community, but it is also simply bad business for King County, which has invested more than \$250 million to date and committed an additional \$170 million to help pay for cleanups and related efforts.

Soundkeeper is also well aware of the community concerns expressed about the Ardagh facility, including the air pollution burden it brings. Although this letter does not focus on those concerns because Soundkeeper's expertise is water pollution, it is important to note that Soundkeeper finds these concerns to be valid and compelling.

Ardagh is the lead producer of industrial soot in the region – by a longshot – and released 161 tons of soot just in 2018.⁵ From 2006-2016, Ardagh emitted some of the most toxic industrial air emissions by volume.⁶ EPA measures Ardagh as one of three low volume air polluters accounting for ninety percent of Seattle's toxic air emissions.⁷ These toxicants include Persistent Bioaccumulative Toxins (PBTs) chromium and lead.⁸ Regionally, Ardagh is the second largest emitter of nitrous oxide, among the top ten emitters of carbon monoxide, hazardous air pollutants and volatile organic compounds, and it is the single largest source of asthmatic irritant sulfur dioxide pollution.⁹

Thank you for accepting and considering these comments on this important issue.

Sincerely,

Katelyn Kinn
Staff Attorney
Puget Soundkeeper Alliance

⁵ <https://crosscut.com/2019/10/should-king-county-renew-its-lease-one-regions-largest-emitters-pollution>

⁶ <https://toxicnews.org/2019/02/21/seattles-segregated-riskscape/>

⁷ Id.

⁸ Id.

⁹ <https://crosscut.com/2019/10/should-king-county-renew-its-lease-one-regions-largest-emitters-pollution>



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cc. Joe McDermott, King County Council
Ben Billick, WA Department of Ecology

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