

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19103-2029

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In the Matter of: :
SAFETY-KLEEN SYSTEMS, INC. : U.S. EPA Docket Number
5360 Legacy Drive, Building 2 : TSCA-03-2012-0234
Suite 100 :
Plano, Texas 75024 :
Respondent : Proceeding Under Sections 15 and 16 of
the Toxic Substances Control Act,
15 U.S.C. §§ 2614 and 2615

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Safety-Kleen Systems, Inc. ("Respondent"), pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or the "Agency") by Sections 15 and 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2614 and 2615, 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. This Consent Agreement memorializes a settlement with conditions as provided by TSCA Section 16(a)(2)(C), 15 U.S.C. § 2615(a)(2)(C). Pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3), this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") simultaneously commence and conclude this proceeding against Respondent to resolve violations of the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth in 40 C.F.R. Part 761, entitled "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions" (hereinafter the "PCB regulations").

General Provisions

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement.
3. Except as provided in Paragraph 2, immediately above, Respondent neither admits nor

denies the specific findings of fact and conclusions of law set forth in this Consent Agreement.

4. Respondent consents to the issuance of this Consent Agreement and the attached Final Order, and agrees to comply with their terms. Respondent agrees not to contest the jurisdiction of Complainant with respect to: (1) the execution of this Consent Agreement; (2) the issuance of the attached Final Order; or (3) the enforcement of the CAFO.
5. For purposes of this proceeding only, Respondent hereby expressly waives any right to a hearing on or to contest any issue of law or fact set forth in this Consent Agreement, and any right to appeal the accompanying Final Order.
6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
7. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.
8. The settlement agreed to by the parties constitutes a settlement with conditions as provided by TSCA Section 16(a)(2)(C), 15 U.S.C. § 2615(a)(2)(C), which authorizes the Administrator to compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under TSCA Section 16, 15 U.S.C. § 2615.
9. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Findings of Fact and Conclusions of Law

10. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), Complainant alleges and adopts the following findings of fact and conclusions of law. At all times relevant to this CAFO:
11. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of civil penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614.
12. Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. § 2614(1)(B) and (C), make it unlawful for any person to fail to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or any rule promulgated under that section.
13. Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), authorizes the Administrator of EPA to compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
14. The "Polychlorinated BiPhenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" regulations, set forth at 40 C.F.R. Part 761 ("PCB regulations"), were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

15. The PCB regulations establish “prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” 40 C.F.R. § 761.1(a).
16. The PCB regulations at 40 C.F.R. § 761.3 define “PCB” as “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance.”
17. Pursuant to 40 C.F.R. § 761.3, “PCB waste” constitutes those PCBs and PCB Items subject to the disposal requirements of 40 C.F.R. Part 761, Subpart D.
18. 40 C.F.R. Part 761, Subpart D, sets forth disposal requirements for PCBs, PCB liquids and PCB Items at concentrations of 50 ppm or greater.
19. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used fuel oil), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.
20. The PCB regulations at 40 C.F.R. § 761.3 define a “generator of PCB waste” as “any person whose act or process produces PCBs that are regulated for disposal under subpart D of this part, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of subpart D of this part.”
21. 40 C.F.R. § 761.3 defines a “person” to include “any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.”
22. Pursuant to 40 C.F.R. § 761.207, a generator who relinquishes control over PCB wastes, as defined in 40 C.F.R. § 761.3, by transporting or offering to transport by his own vehicle or by a vehicle owned by another person, PCB waste for commercial offsite storage or offsite disposal shall prepare a manifest on EPA Form 8700-22, specifying for each bulk load of PCBs, the identity of the PCB waste, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste.
23. Failure to identify PCB waste submitted for commercial offsite storage or offsite disposal on an EPA Manifest form 8700-22 is a violation of 40 C.F.R. § 761.207(a) and, therefore, a violation of TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C).
24. With exceptions not relevant to this matter, processing or distribution in commerce of any PCBs or any PCB Items, regardless of concentration, without an exemption issued under 40 C.F.R. § 761.80, is a violation of 40 C.F.R. § 761.20(c), which is a violation of TSCA Section 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C).

25. Respondent is a corporation incorporated under the laws of Wisconsin, with its principal place of business in Plano, Texas.
26. Respondent is a "person", as defined by 40 C.F.R. § 761.3, subject to TSCA and PCB regulations.
27. Respondent owns, operates and controls a facility located in or around 341 Patterson School Road, Grove City, Pennsylvania.
28. Respondent owns, operates and/or controls a facility located in or around 11520 Balls Ford Road, Manassas, Virginia.
29. Respondent owns, operates and/or controls a facility located in or around 650 Noble Drive, West Mifflin, Pennsylvania.
30. Respondent owns, operates and/or controls a facility located in or around 1606 Pittsburgh Avenue in Erie, Pennsylvania.
31. Respondent owns, operates and/or controls a facility located in or around 60 Katherine Street, Buffalo, New York.
32. Respondent owns, operates and/or controls a facility located in or around Wheeling, West Virginia.
33. Respondent owns, operates and/or controls a facility located in or around Hanover Township, Pennsylvania.
34. Respondent owns, operates and/or controls a facility located in or around New Kingston, Pennsylvania.

Count 1

35. The allegations of Paragraphs 1 through 34 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
36. On or about April 3, 2007, Respondent acquired from a customer and transported to its Wheeling, West Virginia facility approximately 330 gallons of used oil that was subsequently determined by Respondent to be contaminated with a concentration of PCBs over 50 parts per million ("ppm").
37. The acquisition of and introduction into commerce by Respondent of the approximately 330 gallons of PCB-contaminated used oil constituted "distribution in commerce" as defined by 40 C.F.R. § 761.3.
38. On or about April 3, 2007, Respondent violated 40 C.F.R. § 761.20(c), and TSCA

Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce approximately 330 gallons of used oil acquired from a customer. Such used oil was contaminated with a concentration of PCBs of over 50 ppm.

Count 2

39. The allegations of Paragraphs 1 through 38 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
40. On or about April 3, 2007, Respondent commingled the aforementioned approximately 330 gallons of PCB-contaminated used oil with other used oil in storage in a tank at its Wheeling, West Virginia facility.
41. The resulting approximate 20,000 gallons of commingled used oil had a PCB concentration of approximately 6.5 ppm.
42. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used oil fuel), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.
43. The PCB-contaminated used oil fuel was “used oil fuel” for purposes of 40 C.F.R. § 761.20(e)(2)(ii).
44. The approximately 20,000 gallons of PCB-contaminated used oil fuel constituted “PCB waste” as that term is defined by 40 C.F.R. § 761.3.
45. Respondent was the “generator” of the approximately 20,000 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
46. On or about April 17, 2007, Respondent offered for transport the approximate 20,000 gallons of PCB waste by relinquishing control of the waste for shipment from its Wheeling, West Virginia facility to its Buffalo, New York facility, a commercial storage and/or disposal facility, for refining.
47. Respondent failed to identify the approximate 20,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to Buffalo, New York on or about April 17, 2007.
48. On or about April 17, 2007, Respondent, the generator of PCB-contaminated waste oil, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 20,000 gallons of PCB-contaminated used oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent’s Buffalo, New York facility.

Count 3

49. The allegations of Paragraphs 1 through 48 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
50. On or about October 24, 2007, Respondent acquired from a customer and transported to its Manassas, Virginia facility approximately 220 gallons of used oil that was subsequently determined by Respondent to be contaminated with a concentration of PCBs over 50 ppm.
51. The acquisition of and introduction into commerce by Respondent of the approximate 220 gallons of PCB-contaminated used oil constituted "distribution in commerce" as defined by 40 C.F.R. § 761.3.
52. On or about October 24, 2007, Respondent violated 40 C.F.R. § 761.20(c) and TSCA Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce approximately 220 gallons of PCB-contaminated used oil acquired from a customer that was contaminated with a concentration of PCBs of over 50 ppm.

Count 4

53. The allegations of Paragraphs 1 through 52 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
54. On or about October 24, 2007, Respondent commingled the aforementioned approximately 220 gallons of PCB-contaminated used oil fuel with other used oil in a tank in storage at its Manassas, Virginia facility.
55. The resulting approximate 20,000 gallons of commingled used oil had a PCB concentration of approximately 9.3 ppm.
56. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used oil fuel), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.
57. The PCB-contaminated used oil fuel was "used oil fuel" for purposes of 40 C.F.R. § 761.20(e)(2)(ii).
58. The approximately 20,000 gallons of PCB-contaminated used oil fuel constituted "PCB waste" as that term is defined by 40 C.F.R. § 761.3.
59. Respondent was the "generator" of the approximately 20,000 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
60. On or about October 25, 2007, Respondent offered for transport the approximately

20,000 gallons of PCB waste by relinquishing control for transport from its Manassas, Virginia facility to its Buffalo, New York facility, a commercial storage and/or disposal facility for refining.

61. On or about October 25, 2007, Respondent failed to identify the approximately 20,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to Buffalo, New York.
62. On or about October 25, 2007, Respondent, the generator of PCB waste, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 20,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent's Buffalo, New York facility.

Count 5

63. The allegations of Paragraphs 1 through 62 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
64. On or about August 22, 2008, Respondent acquired from a customer and transported to its Mifflin, Pennsylvania facility approximately 1,000 gallons of used oil that was subsequently determined by Respondent to be contaminated with a concentration of PCBs over 50 ppm.
65. The acquisition of and introduction into commerce by Respondent of the approximate 1,000 gallons of PCB-contaminated used oil constituted "distribution in commerce" as defined by 40 C.F.R. § 761.3.
66. On or about August 22, 2008, Respondent violated 40 C.F.R. § 761.20(c) and TSCA Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce approximately 1,000 gallons of used oil acquired from a customer that was contaminated with a concentration of PCBs over 50 ppm.

Count 6

67. The allegations of Paragraphs 1 through 66 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
68. On or about August 22, 2008, Respondent commingled the aforementioned approximately 1,000 gallons of PCB-contaminated used oil with other used oil in a tank in storage at its Mifflin, Pennsylvania facility.
69. The resulting approximately 22,000 gallons of commingled used oil had a PCB concentration of approximate 11 ppm.
70. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R.

§ 761.20(e)(2)(ii) (testing of used oil fuel), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.

71. The PCB-contaminated used oil fuel was “used oil fuel” for purposes of 40 C.F.R. § 761.20(e)(2)(ii).
72. The approximately 22,000 gallons of PCB-contaminated used oil constituted “PCB waste” as that term is defined by 40 C.F.R. § 761.3.
73. Respondent was the “generator” of the approximately 22,000 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
74. On or about August 25, 2008, Respondent offered for shipment the approximately 22,000 gallons of PCB waste by relinquishing control for transport from its Mifflin, Pennsylvania facility to its Buffalo, New York facility, a commercial storage and/or disposal facility, for refining.
75. On or about August 25, 2008, Respondent failed to identify the approximately 22,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to Buffalo, New York.
76. On or about August 25, 2008, Respondent, the generator of PCB waste, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 22,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent’s Buffalo, New York facility.

Count 7

77. The allegations of Paragraphs 1 through 76 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
78. On or about October 13, 2008, Respondent acquired an undetermined volume of used oil from a customer and transferred such used oil to its Wheeling, West Virginia facility. Such used oil was subsequently determined by Respondent to be contaminated with a concentration of PCBs over 50 ppm.
79. The acquisition of and introduction into commerce by Respondent of the aforementioned undetermined volume of PCB-contaminated used oil constituted “distribution in commerce” as defined by 40 C.F.R. § 761.3.
80. On or about October 13, 2008, Respondent violated 40 C.F.R. § 761.20(c) and TSCA Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce an undetermined volume of used oil acquired from a customer that was contaminated with a concentration of PCBs of over 50 ppm.

Count 8

81. The allegations of Paragraphs 1 through 80 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
82. On or about October 13, 2008, Respondent commingled the aforementioned undetermined volume of PCB-contaminated used oil with other used oil in a tank in storage at its Wheeling, West Virginia facility.
83. The resulting approximately 3,000 gallons of commingled used oil had a PCB concentration of approximately 4 ppm.
84. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used oil fuel), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.
85. The PCB-contaminated used oil fuel was “used oil fuel” for purposes of 40 C.F.R. § 761.20(e)(2)(ii).
86. The approximately 3,000 gallons of PCB-contaminated used oil constituted “PCB waste” as that term is defined by 40 C.F.R. § 761.3.
87. Respondent was the “generator” of the approximately 3,000 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
88. On or about October 17, 2008, Respondent offered for shipment the approximately 3,000 gallons of PCB waste by relinquishing control of the waste for transport from its Wheeling, West Virginia facility to its Buffalo, New York facility, a commercial storage and/or disposal facility, for refining.
89. On or about October 17, 2008, Respondent failed to identify the approximately 3,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to its Buffalo, New York facility.
90. On or about October 17, 2008, Respondent, the generator of PCB waste, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 3,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent’s Buffalo, New York facility.

Count 9

91. The allegations of Paragraphs 1 through 90 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.

92. On or about January 14, 2009, Respondent acquired from a customer an undetermined volume of used oil and transported such used oil to its Manassas, Virginia facility. Such used oil was subsequently determined by Respondent to be contaminated with a concentration of PCBs over 50 ppm.
93. The acquisition of and introduction into commerce by Respondent of the aforementioned undetermined volume of PCB-contaminated used oil constituted "distribution in commerce" as defined by 40 C.F.R. § 761.3.
94. On or about January 14, 2009, Respondent violated 40 C.F.R. § 761.20(c) and TSCA Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce an undetermined volume of used oil acquired from a customer that was contaminated with a concentration of PCBs of over 50 ppm.

Count 10

95. The allegations of Paragraphs 1 through 94 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
96. On or about January 14, 2009, Respondent commingled the aforementioned undetermined volume of PCB-contaminated used oil with other used oil in a tank in storage at its Wheeling, West Virginia facility.
97. The resulting approximately 5,688 gallons of commingled used oil had a PCB concentration of approximately 155 ppm.
98. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used oil fuel), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.
99. The PCB-contaminated used oil fuel was "used oil fuel" for purposes of 40 C.F.R. § 761.20(e)(2)(ii).
100. The approximately 5,688 gallons of PCB-contaminated used oil constituted "PCB waste" as that term is defined by 40 C.F.R. § 761.3.
101. Respondent was the "generator" of the approximately 5,688 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
102. On or about January 14, 2009, Respondent offered for transport the approximately 5,688 gallons of PCB waste by relinquishing control of the waste for transport from its Manassas, Virginia facility to its Buffalo, New York facility, a commercial storage and disposal facility, for refining.

103. On or about January 14, 2009, Respondent failed to identify the approximately 5,688 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to its Buffalo, New York facility.
104. On or about January 14, 2009, Respondent, the generator of PCB waste, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 5,688 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent's Buffalo, New York facility.

Count 11

105. The allegations of Paragraphs 1 through 104 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
106. On or about October 26, 2009, Respondent acquired from a customer approximately 481 gallons of PCB-contaminated used oil and transported the used oil to its Hanover Township, Pennsylvania facility. Subsequently, Respondent determined that the used oil was contaminated with a concentration of PCBs over 50 ppm.
107. The acquisition of and introduction into commerce by Respondent of the aforementioned approximately 481 gallons of PCB-contaminated used oil constituted "distribution in commerce" as defined by 40 C.F.R. § 761.3.
108. On or about October 26, 2009, Respondent violated 40 C.F.R. § 761.20(c) and TSCA Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce approximately 481 gallons of used oil acquired from a customer that was contaminated with a concentration of PCBs of over 50 ppm.

Count 12

109. The allegations of Paragraphs 1 through 108 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
110. On or about October 26, 2009, Respondent commingled the aforementioned approximately 481 gallons of PCB-contaminated used oil with other used oil in a tank in storage at its Hanover Township, Pennsylvania facility.
111. The resulting approximately 6,667 gallons of commingled used oil had a PCB concentration of approximately 17 ppm.
112. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used oil fuel), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.

113. The PCB-contaminated used oil fuel was “used oil fuel” for purposes of 40 C.F.R. § 761.20(e)(2)(ii).
114. The approximately 6,667 gallons of PCB-contaminated used oil constituted “PCB waste” as that term is defined by 40 C.F.R. § 761.3.
115. Respondent was the “generator” of the approximately 6,667 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
116. On or about October 28, 2009, Respondent offered for transport the approximate 6,667 gallons of PCB waste by relinquishing control of the waste for transport from its Hanover Township, Pennsylvania facility to its Buffalo, New York facility, a commercial storage and/or disposal facility, for refining.
117. On or about October 28, 2009, Respondent failed to identify the approximately 6,667 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to its Buffalo, New York facility.
118. On or about October 28, 2009, Respondent, the generator of PCB waste, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 6,667 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent’s Buffalo, New York facility.

Count 13

119. The allegations of Paragraphs 1 through 118 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
120. On or about April 27, 2010, Respondent acquired approximately 120 gallons of PCB-contaminated used oil from a customer and transported the used oil to its New Kingston, Pennsylvania facility. Respondent subsequently determined that the used oil was contaminated with a concentration of PCBs of over 50 ppm.
121. The acquisition of and introduction into commerce by Respondent of the aforementioned approximately 120 gallons of PCB-contaminated used oil constituted “distribution in commerce” as defined by 40 C.F.R. § 761.3.
122. On or about April 27, 2010, Respondent violated 40 C.F.R. § 761.20(c) and TSCA Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce approximately 120 gallons of used oil acquired from a customer that was contaminated with a concentration of PCBs over 50 ppm.

Count 14

123. The allegations of Paragraphs 1 through 122 of this Consent Agreement are incorporated

herein by reference as if fully set forth at length.

124. On or about April 27, 2010, Respondent commingled the aforementioned approximately 120 gallons of PCB-contaminated used oil with other used oil in a tank in storage at its New Kingston, Pennsylvania facility.
125. The resulting approximately 4,000 gallons of commingled used oil had a PCB concentration of approximately 24 ppm.
126. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used oil fuel), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.
127. The PCB-contaminated used oil fuel was “used oil fuel” for purposes of 40 C.F.R. § 761.20(e)(2)(ii).
128. The approximately 4,000 gallons of PCB-contaminated used oil constituted “PCB waste” as that term is defined by 40 C.F.R. § 761.3.
129. Respondent was the “generator” of the approximately 4,000 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
130. On or about April 30, 2010, Respondent offered for transport the approximately 4,000 gallons of PCB-contaminated waste by relinquishing control of the waste for transport from its New Kingston, Pennsylvania facility to its Buffalo, New York facility, for refining.
131. On or about April 30, 2010, Respondent failed to identify the approximately 4,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to Buffalo, New York.
132. On or about April 30, 2010, Respondent, the generator of PCB waste, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 4,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent’s Buffalo, New York facility.

Count 15

133. The allegations of Paragraphs 1 through 132 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
134. On or about September 23, 2010, Respondent acquired from a customer approximately 275 gallons of PCB-contaminated used oil and transported said used oil to its Hanover Township, Pennsylvania facility. Respondent subsequently determined the used oil was

contaminated with a concentration of PCBs over 50 ppm.

135. The acquisition of and introduction into commerce by Respondent of the aforementioned approximately 275 gallons of PCB-contaminated used oil constituted “distribution in commerce” as defined by 40 C.F.R. § 761.3.
136. On or about September 23, 2010, Respondent violated 40 C.F.R. § 761.20(c) and TSCA Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce approximately 275 gallons of used oil acquired from a customer that was contaminated with a concentration of PCBs over 50 ppm.

Count 16

137. The allegations of Paragraphs 1 through 136 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
138. On or about September 23, 2010, Respondent commingled the aforementioned approximately 275 gallons of PCB contaminated used oil with other used oil in a tank in storage at its Hanover Township, Pennsylvania facility.
139. The resulting approximately 25,000 gallons of blended used oil had a PCB concentration of approximately 9.5 ppm.
140. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used oil fuel), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.
141. The PCB-contaminated used oil fuel was “used oil fuel” for purposes of 40 C.F.R. § 761.20(e)(2)(ii).
142. The approximately 25,000 gallons of PCB-contaminated used oil constituted “PCB waste” as that term is defined by 40 C.F.R. § 761.3.
143. Respondent was the “generator” of the approximately 25,000 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
144. On or about September 27, 2010, Respondent offered for transport the approximately 25,000 gallons of PCB-contaminated waste by relinquishing control of the waste for transport from its Hanover Township, Pennsylvania facility to its Buffalo, New York facility, a commercial storage and/or disposal facility, for refining.
145. On or about September 27, 2010, Respondent failed to identify the approximately 25,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to Buffalo, New York.

146. On or about September 27, 2010, Respondent, the generator of PCB waste, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 25,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent's Buffalo, New York facility.

Count 17

147. The allegations of Paragraphs 1 through 146 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
148. On or about September 23, 2011, Respondent acquired from a customer approximately 600 gallons of PCB-contaminated used oil and transported that used oil to its Erie, Pennsylvania facility. Subsequently, Respondent determined that the used oil was contaminated with a concentration of PCBs over 50 ppm.
149. The acquisition of and introduction into commerce by Respondent of the aforementioned approximately 600 gallons of PCB-contaminated used oil constituted "distribution in commerce" as defined by 40 C.F.R. § 761.3.
150. On or about September 23, 2011, Respondent violated 40 C.F.R. § 761.20(c) and TSCA Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce approximately 600 gallons of used oil acquired from a customer that was contaminated with a concentration of PCBs over 50 ppm.

Count 18

151. The allegations of Paragraphs 1 through 150 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
152. On or about September 23, 2011, Respondent commingled the aforementioned approximately 600 gallons of PCB-contaminated used oil with other used oil in a tank in storage at its Erie, Pennsylvania facility.
153. The resulting approximately 20,000 gallons of commingled used oil had a PCB concentration of approximately 61.5 ppm.
154. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used oil fuel), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.
155. The PCB-contaminated used oil fuel was "used oil fuel" for purposes of 40 C.F.R. § 761.20(e)(2)(ii).

- 156. The approximately 20,000 gallons of PCB-contaminated used oil constituted “PCB waste” as that term is defined by 40 C.F.R. § 761.3.
- 157. Respondent was the “generator” of the approximately 20,000 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
- 158. On or about September 26, 2011, Respondent offered for transport the approximately 20,000 gallons of PCB waste by relinquishing control of the waste for transport from its Erie, Pennsylvania facility to its Buffalo, New York facility, a commercial storage and/or disposal facility, for refining.
- 159. On or about September 26, 2011, Respondent failed to identify the approximately 20,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to its Buffalo, New York facility.
- 160. On or about September 26, 2011, Respondent, the generator of PCB waste, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 20,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent’s Buffalo, New York facility.

Count 19

- 161. The allegations of Paragraphs 1 through 160 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
- 162. On or about April 20, 2012, Respondent acquired from a customer approximately 3,600 gallons of PCB-contaminated used oil and transported that used oil to its Erie, Pennsylvania facility. Subsequently, Respondent determined that the used oil was contaminated with a concentration of PCBs over 50 ppm.
- 163. The acquisition of and introduction into commerce by Respondent of the aforementioned approximately 3,600 gallons of PCB-contaminated used oil constituted “distribution in commerce” as defined by 40 C.F.R. § 761.3.
- 164. On or about April 20, 2012, Respondent violated 40 C.F.R. § 761.20(c), and TSCA Sections 6(e) and 15(1)(c), 15 U.S.C. §§ 2605(e) and 2614(1)(c), by distributing in commerce approximately 3,600 gallons of used oil acquired from a customer that was contaminated with a concentration of PCBs over 50 ppm.

Count 20

- 165. The allegations of Paragraphs 1 through 164 of this Consent Agreement are incorporated herein by reference as if fully set forth at length.
- 166. On or about April 20, 2012, Respondent commingled the aforementioned approximately

- 3,600 gallons of PCB-contaminated used oil with other used oil in a tank in storage at its Erie, Pennsylvania facility.
167. The resulting approximately 22,000 gallons of blended used oil had a PCB concentration of approximately 28.5 ppm.
168. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used fuel oil), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.
169. The PCB-contaminated used oil fuel was “used oil fuel” for purposes of 40 C.F.R. § 761.20(e)(2)(ii).
170. The approximately 22,000 gallons of PCB-contaminated used oil constituted “PCB waste” as that term is defined by 40 C.F.R. § 761.3.
171. Respondent was the “generator” of the approximately 22,000 gallons of PCB waste, as that term is defined by 40 C.F.R. § 761.3.
172. On or about April 24, 2012, Respondent offered for transport the approximately 22,000 gallons of PCB waste by relinquishing control of the waste for transport from its Erie, Pennsylvania facility to its Buffalo, New York facility, a commercial storage and/or disposal facility, for refining.
173. On or about April 24, 2012, Respondent failed to identify the approximately 22,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the shipment to its Buffalo, New York facility.
174. On or about April 24, 2012, Respondent, the generator of PCB waste, violated 40 C.F.R. § 761.207(a) and TSCA Sections 6(e) and 15(1)(C), 15 U.S.C. §§ 2605(e) and 2614(1)(C), by failing to identify approximately 22,000 gallons of PCB-contaminated waste oil as PCB waste on the manifest that accompanied the off-site shipment of the PCB waste to Respondent’s Buffalo, New York facility.

Civil Penalty

175. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty of up to \$25,000 per violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, violations of Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), which occurred on or after March 16, 2004 and on or before January 12, 2009, are subject to an increased statutory maximum penalty of \$32,500 per violation and the maximum inflation-adjusted statutory penalty for violations occurring after January 12, 2009 is increased to \$37,500 per violation.

176. In settlement of EPA's claims for civil monetary penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty in the amount of **Three Hundred and Thirty Thousand Dollars (\$330,000.00)**, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by all parties, signed by the Regional Administrator or his designee, the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
177. The civil penalty set forth in the preceding paragraph is based on a number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and the penalty criteria set forth in EPA's *Polychlorinated BiPhenyls (PCB) Penalty Policy* (April 9, 1990), as amended. Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, the June 6, 2006 memorandum by Acting EPA Toxics and Pesticides Enforcement Division Director Stephanie P. Brown entitled *Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Inflation Adjustment Rule* ("Brown Memorandum") and the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum").
178. EPA hereby agrees and acknowledges that payment of the civil penalty by Respondent shall be full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA Section 16(a), 15 U.S.C. § 2615(a), for the violations alleged in this CAFO.
179. Respondent shall pay the civil penalty amount assessed by this CAFO, plus any interest, administrative fees, and late payment penalties owed, by either cashier's check, certified check, or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2012-0234;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed to:

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

Customer service contact: 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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"

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No. 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Joseph J. Lisa
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029.

180. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

181. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest 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).
182. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
183. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
184. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Settlement with Conditions

185. The Respondent agrees to the following conditions to this settlement in accordance with Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C).
186. In addition to the payment of the penalty described, above, Respondent agrees that, within ninety (90) days of the effective date of this CAFO, Respondent shall implement at its facilities located in EPA Region III ("Region III facilities") the operational changes detailed in Attachment A to this CAFO, which encompass requirements for mandatory pre-shipment PCB testing of used oil collected by Respondent from certain third party collectors, including, but not limited to, used oil collection companies, scrap yards, and municipalities. As described in Attachment A, the operational changes also include requirements for mandatory PCB testing of oil collection trucks before off-loading at specified Safety-Kleen facilities, as well as mandatory PCB testing of oil collection tanks before shipment of the oil off-site from specified Safety-Kleen facilities.
187. Within 120 days of the effective date of this CAFO, Respondent shall submit a certification to EPA, declaring that (1) Respondent has fully implemented at its Region III facilities the operational changes set forth in Attachment A to this CAFO, and (2) Respondent is operating its Region III facilities in compliance with 40 C.F.R. Part 761 and Respondent's policies. Respondent shall submit this certification via certified mail, return receipt requested; first class mail; overnight mail (Express or Priority); hand-

delivery; or any reliable commercial delivery service to the following:

Craig Yussen
Chemical Engineer
Land and Chemicals Division (3LC61)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103

and

Joseph J. Lisa
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103.

188. The aforementioned certification and any other report submitted by Respondent to EPA pursuant to this CAFO shall contain the following certification to be signed by a responsible corporate officer:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate 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 fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

189. (a) If any event occurs which causes or may cause delays in the completion of the operational changes as required by this Consent Agreement and/or Attachment A of this Consent Agreement, Respondent shall notify EPA in writing or by electronic mail within ten (10) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the

anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this Agreement based on such incident.

- (b) If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by a force majeure, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
- (c) In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Agreement has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision and any delays in completion of the operational changes outline in Attachment A of this Agreement shall not be excused, and an enforcement action may result.
- (d) The burden of proving that any delay is caused by a force majeure shall rest with Respondent. Increased cost or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be considered a force majeure or a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

190. In accordance with TSCA Section 16(a)(2)(C), 15 U.S.C. § 2615(a)(2)(C), and provided that Respondent fully implements all of the requirements for Region III facilities detailed in Attachment A to this CAFO and referenced above, Respondent shall, for 730 days following the effective date of this CAFO:

- (a) Notify EPA in writing within fifteen (15) days of discovery of any violations by Respondent of the distribution in commerce requirements, set forth in 40 C.F.R. § 761.20(c), occurring within the boundaries of EPA Region III which are attributable to Respondent's receipt of used oil with a PCB concentration of ≥ 50 ppm.
- (b) Pay stipulated penalties as follows:
 - (i) \$14,169 for each of Respondent's violations of 40 C.F.R. § 761.20(c), where EPA determines that the extent of potential damage is "Major" under EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy," April 9, 1990 ("PCB Penalty Policy");
 - (ii) \$9,210 for each of Safety-Kleen's violations of 40 C.F.R. § 761.20(c),

where EPA determines that the extent of potential damage is "Significant" under EPA's PCB Penalty Policy;

- (iii) \$2,126 for each of Safety-Kleen's violations of 40 C.F.R. § 761.20(c), where EPA determines that the extent of potential damage is "Minor" under EPA's PCB Penalty Policy.

191. Respondent shall pay the stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties.
192. Respondent shall make stipulated penalty payments by submitting a company bank, cashier's, or certified check in the applicable amount, payable to the order of the "Treasurer, United States of America," and by referencing the EPA Docket Number of this action on the check. The check should be forwarded to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Joseph J. Lisa
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029.

Interest and late charges, as set forth in this CAFO, shall be paid as applicable.

Other Applicable Laws

193. Nothing in this CAFO shall alter, relieve or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental laws and regulations.

Reservation of Rights

194. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c).
195. EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk, or other violations of federal law.
196. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek other remedies or sanctions available by virtue of Respondent's violation of this CAFO or Respondent's violation of the statutes and regulations upon which this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.

Parties Bound

197. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent.
198. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

199. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

*In the Matter of:
Safety-Kleen Systems, Inc.*


*Consent Agreement
Docket No. TSCA-03-2012-0234*

Entire Agreement

200. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

Date: 8/30/12

By: 

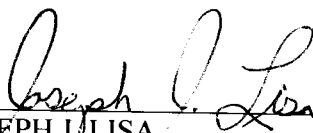
VIRGIL W. DUFFIE III
Assistant Secretary
Safety-Kleen Systems, Inc.

*In the Matter of:
Safety-Kleen Systems, Inc.*

*Consent Agreement
Docket No. TSCA-03-2012-0234*

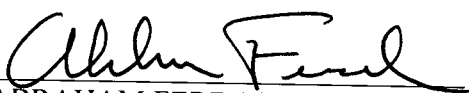
For Complainant:

Date: 9/4/2012

By: 
JOSEPH J. LISA
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9/13/12

By: 
ABRAHAM FERDAS,
Director, Land and Chemicals Division

Attachment A

Operational Improvements to Safety-Kleen Systems, Inc. EPA Region III Facilities for Polychlorinated Biphenyls ("PCBs")

1. Safety-Kleen shall develop and implement company policies that require pre-shipment PCB testing for used oil collected from certain third party collectors (defined as entities that collect used oil from other parties), including, for purposes of this Consent Agreement and Final Order, all used oil collection companies, scrap yards, utilities, and municipal do-it-yourself ("DIY") collection sites. There shall be no pre-shipment testing requirements for used oil collected from non-municipal retail DIY collection programs as that oil will be tested in accordance with Safety-Kleen's policies and this CAFO. Other non-automotive sources (ex., including, but not limited to, farms, industrial sites) shall be initially sampled and pre-qualified into the Safety-Kleen oil program and shall have retain samples taken upon each shipment thereafter.
2. In order to minimize the risk of inadvertently mismanaging PCB waste under the Toxic Substances Control Act ("TSCA"), Safety-Kleen shall implement operational improvements at its individual facilities noted below, requiring PCB testing of any used oil that Safety-Kleen collects prior to off-loading at its facilities or after off-loading into its used oil guard tank system, as described below, to ensure PCB verification analyses of used oil shipments are performed prior to sending them off-site from Safety-Kleen's facilities.
3. Safety-Kleen shall test the used oil that it collects for the presence of PCBs at the detection limit of two (2) parts per million ("ppm").
4. If Safety-Kleen detects PCBs in the used oil that it collects at any of its facilities located in EPA Region 3 in an amount of 2 ppm or greater, Safety-Kleen shall (1) implement its policies to determine if the PCB containing material is regulated under TSCA; (2) notify the U.S. Environmental Protection Agency, Region 3 and the generator of the used oil within 15 days of PCB detection, where the PCB contaminated used oil is TSCA regulated; and (3) manage any TSCA regulated PCB-contaminated waste oil in accordance with the applicable requirements set forth in TSCA, 15 U.S.C. §§ 2601 *et seq.*, and the federal regulations promulgated thereunder at 40 C.F.R. Part 761, including, but not limited to, those pertaining to PCB storage and disposal, the prohibition of dilution of PCBs regulated for disposal, and the decontamination standards and procedures for removing PCBs from contaminated equipment.

Facility-Specific PCB Operational Improvements

Facility Name: Baltimore, MD

The facility has implemented a rotational management of its waste oil utilizing rail cars as a guard tank system to ensure that the facility tests oil prior to shipment off site. The facility locks down each full rail car to perform PCB verification analysis on its contents before off-site treatment.

Facility Name: Erie, PA

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: Fairless Hills, PA

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: Johnstown, PA

The facility has implemented a rotational management of its waste oil storage tank and rail cars as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank and rail car to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: New Kingstown, PA

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: West Chester, PA

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The

facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: West Mifflin, PA

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: Wilkes-Barre, PA

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: Chesapeake, VA

The facility has implemented a rotational management of its waste oil rail tank cars (located off-site) as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each rail tank car to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: Chester, VA

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: Manassas, VA

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: Vinton, VA

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: Poca, WV

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility has three tanks to store used oil and locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

Facility Name: Wheeling, WV

The facility has implemented a rotational management of its waste oil storage tanks as a guard tank system to ensure that the facility tests oil prior to shipment off-site. The facility locks down each tank to perform PCB verification analysis on its contents before off-site shipment.

In the Matter of:
Safety-Kleen Systems, Inc.

Consent Agreement
Docket No. TSCA-03-2012-0234

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

**SAFETY-KLEEN SYSTEMS, INC.
5360 Legacy Drive, Building 2
Suite 100
Plano, Texas 75024**

Respondent

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:
:

**U.S. EPA Docket Number
TSCA-03-2012-0234**

Final Order

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2012 SEP 19 PM 12: 51

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FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency – Region III (“Complainant”) and Safety-Kleen Systems, Inc. (“Respondent”), have executed a document entitled “Consent Agreement” which I hereby ratify as a Consent Agreement in accordance with 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 terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615, and the Consolidated Rules of Practice, and upon the representations in the Consent Agreement that the penalty agreed to therein is based upon a consideration of factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and is consistent with the settlement with conditions authority of Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), Respondent Safety-Kleen Systems, Inc. is hereby ordered to pay a civil penalty of Three

*In the Matter of:
Safety-Kleen Systems, Inc.*

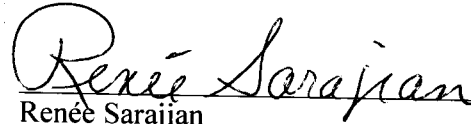
*Consent Agreement
Docket No. TSCA-03-2012-0234*

Hundred and Thirty Thousand dollars (\$330,000), as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement and Attachment A thereto.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date:

9/18/12



Renée Sarajian
Regional Judicial Officer
U.S. EPA Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Safety-Kleen Systems, Inc.
5360 Legacy Drive, Suite 100
Plano, Texas 75024**

Respondent;

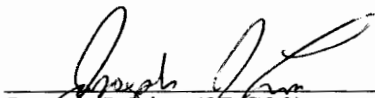
**: U.S. EPA Docket No. TSCA-03-2012-0234
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: Proceeding under Sections 15 and 16
: of the Toxic Substances Control Act,
: 15 U.S.C. §§ 2614 and 2615
:
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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 the original and one copy of the foregoing Consent Agreement and the accompanying Final Order. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Overnight Mail - Commercial Delivery Service to the following:

Virgil W. Duffie, Esquire
Vice President and Assistant General Counsel
Safety-Kleen Systems, Inc.
5360 Legacy Drive, Building 2
Suite 100
Plano, Texas 75024

9/19/2012
/ Date



Joseph J. Lisa (3RC30)
Sr. Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2479