

Statutory and Regulatory Framework

4. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

5. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 262.

6. Section 3004 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations establishing performance standards applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous as may be necessary to protect human health and the environment.

7. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

8. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "K.A.R.").

9. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of the Nebraska Administrative Code (hereinafter "Neb. Admin. Code").

10. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order.

11. The State of Kansas and the State of Nebraska have been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

12. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$124,426 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 8, 2025. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

13. The regulation at 40 C.F.R. § 260.10, as adopted by reference at K.A.R. 28-31-260(a) and Neb. Admin. Code Title 128 Chapter 1.103, defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

14. The regulation at 40 C.F.R. § 260.10, as adopted by reference at K.A.R. 28-31-260(a) and Neb. Admin. Code Title 128 Chapter 1.052, defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

15. “Solid waste” is defined at 40 C.F.R. § 261.2, as adopted by reference at K.A.R. 28-31-261(a) and defined in Neb. Admin. Code Title 128 Chapters 2 and 3.

16. “Hazardous waste” is defined at 40 C.F.R. § 261.3, as adopted by reference at K.A.R. 28-31-261(a) and defined at Neb. Admin. Code Title 128 Chapter 1.062.

17. The regulation at 40 C.F.R. § 260.10, as adopted by reference at K.A.R. 28-31-261(a) and defined at Neb. Admin. Code Title 128 Chapter 1.062, defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

18. The regulation at 40 C.F.R. § 260.10, as adopted by reference at K.A.R. 28-31-261(a) and defined at Neb. Admin. Code Title 128 Chapter 1.062, defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

General Factual Background

19. Respondent is a corporation and authorized to conduct business within the States of Kansas and Nebraska. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

20. Respondent owns and operates RCRA permitted facilities located at 1311 South Anna, Wichita, Kansas (“Wichita facility”) and 2700 West Second Street, Grand Island, Nebraska (“Grand Island (“facility”). Respondent operates as a chemical retailer and conducts waste collection activities at its facilities.

Facts and Permit Conditions Common to the Wichita Facility

21. Respondent employs approximately 12 people at the Wichita facility.

22. On or about September 25, 2019, the Kansas Department of Health and Environment issued a RCRA permit for the Wichita facility bearing the following RCRA ID number: KSD000809723 (hereinafter “Wichita permit”). The Wichita permit became effective on November 1, 2019, and is in effect for ten (10) years from the effective date unless it is revoked and reissued or terminated or continued in accordance with K.A.R. 28-31-124b.

23. Pursuant to Permit Condition I.A. of the Wichita permit (Effect of Permit), Respondent is allowed to store and treat hazardous waste in accordance with the terms and conditions of the permit. Any treatment, storage, or disposal of hazardous waste not authorized by the permit is strictly prohibited.

24. Pursuant to Permit Condition I.E.1. of the Wichita permit (Duties and Requirements – Duty to Comply), Respondent shall comply with the conditions of the permit. Any permit noncompliance constitutes a violation of RCRA and is grounds for, among other things, enforcement action.

25. Pursuant to Permit Condition IV.B.1. of the Wichita permit (Storage in Tanks – Permitted and Prohibited Waste), Respondent is allowed to store the hazardous wastes identified in Attachment 2 of the Wichita permit in a 20,000-gallon storage tank with secondary containment.

26. Pursuant to Permit Condition IV.G.3.a. of the Wichita permit (Storage in Tanks – Inspection Schedules and Procedures), Respondent shall inspect the above ground portions of the tank system once each operating day to detect corrosion or releases of waste.

27. Pursuant to Permit Condition IV.G.4. of the Wichita permit (Storage in Tanks – Inspection Schedules and Procedures), Respondent shall document compliance with Permit Condition IV.G. and place the documentation in the Facility operating record.

28. On or about June 10-11, 2024, an EPA inspector conducted a RCRA Compliance Evaluation Inspection (hereinafter “the Wichita inspection”) of the hazardous waste management

practices at the Wichita facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a permitted treatment, storage and disposal facility, Large Quantity Generator of hazardous waste, and used oil generator.

29. Pursuant to Attachment 2 of the Wichita permit, Respondent is permitted to accept for storage the following hazardous waste codes: ignitable waste (D001), arsenic (D004), barium (D005), cadmium (D006), chromium (D007), lead (D008), mercury (D009), selenium (D010), silver (D011), benzene (D018), carbon tetrachloride (D019), chlorobenzene (D021), chloroform (D022), o-cresol (D023), m-cresol (D024), p-cresol (D025), cresol (D026), 1,4-dichlorobenzene (D027), 1,2-dichloroethane (D028), 1,1-dichloroethylene (D029), 2,4-dinitrotoluene (D030), hexachlorobenzene (D032), hexachlorobutadiene (D033), hexachloroethane (D034), methyl ethyl ketone (D035), nitrobenzene (D036), pentachlorophenol (D037), pyridine (D038), tetrachloroethylene (D039), trichloroethylene (D040), 2,4,5-trichlorophenol (D041), 2,4,6-trichlorophenol (D042), vinyl chloride (D043), spent halogenated solvents (F002), and spent nonhalogenated solvents (F003 and F005). These are solid and hazardous wastes as defined at K.A.R. 28-31-261(a).

Facts and Permit Conditions Common to the Grand Island Facility

30. Respondent employs approximately 8 people at the Grand Island facility.

31. On or about October 7, 2022, the NDEE issued a RCRA permit for the Grand Island facility bearing the following RCRA ID: NED053316535 (hereinafter "Grand Island permit"). The permit became effective on October 13, 2022, and is in effect for five (5) years from the date of issuance unless it is revoked and reissued, terminated, or continued in accordance with Title 128, Chapter 15, 012 through 015.

32. Pursuant to Permit Condition B.2. of the Grand Island permit (Effect of Permit), Respondent is allowed to store hazardous waste in the hazardous waste management units authorized by and operated in accordance with the requirements of the permit. Any storage, treatment, and/or disposal of hazardous waste not authorized by the permit is prohibited.

33. Pursuant to Permit Conditions B.3.e and B.5. of the Grand Island permit (Enforcement and Duties and Requirements), any permit noncompliance constitutes a violation of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 through 81-1533 and is grounds for enforcement action, among other actions.

34. Pursuant to Permit Condition E.1. of the Grand Island permit (Description of Tanks), the facility has one hazardous waste aboveground storage tank with a storage capacity of 12,000-gallons. The storage tank is located within secondary containment that is comprised of an engineered lip berm and coated with chemical resistant sealant that is compatible with the wastes stored.

35. On or about May 14, 2024, EPA inspectors conducted a RCRA Compliance Evaluation Inspection (hereinafter "the Grand Island inspection") of the hazardous waste

management practices at the Grand Island facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a permitted treatment, storage and disposal facility, Large Quantity Generator of hazardous waste, used oil generator, and small quantity handler of universal waste.

36. Pursuant to Permit Condition B.1.d., the hazardous wastes at the facility include used parts washer solvent and associated tank bottoms and sediment (D001 and D039), used immersion cleaner (D006), dry cleaning waste [perchloroethylene or petroleum base] (D001, F002), paint waste (F003, F005, D001), and aqueous parts cleaner solvent (D039). The permit indicates that other D-list waste codes may also apply to these wastes.

37. The waste codes identified above are: ignitable waste (D001), cadmium (D006), chromium (D007), tetrachloroethylene (D039), spent halogenated solvents (F002), and spent nonhalogenated solvents (F003 and F005). These are solid and hazardous wastes as defined at Neb. Admin. Code Chapters 2 and 3.

Violations

38. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Grand Island Facility: Failure to Maintain Secondary Containment System

39. Complainant hereby incorporates the allegations contained in Paragraphs 19 through 37 above, as if fully set forth herein.

40. Pursuant to Permit Condition E.3. of the Grand Island permit (secondary Containment and Detection of Releases for Tank Storage), Respondent shall operate and maintain the secondary containment system in accordance with 40 C.F.R. § 264.193, as incorporated by reference in Title 128, Chapter 21, 010.

41. Pursuant to 40 C.F.R. § 264.193(e)(1)(iii), secondary containment systems must have an external liner system that is free of cracks or gaps.

42. At the time of the Grand Island Inspection, the inspector observed cracks in the tank farm secondary containment system.

43. Respondent's failure to operate and maintain the secondary containment system at the Grand Island facility that is free of cracks or gaps is a violation of Grand Island Permit Condition E.3. and 40 C.F.R. § 264.193, as incorporated by reference in Title 128, Chapter 21, 010.

Count 2

Wichita Facility: Failure to Properly Document Inspections

44. Complainant hereby incorporates the allegations contained in Paragraphs 19 through 37 above, as if fully set forth herein.

45. Pursuant to Permit Condition IV.G.3.a. of the Wichita permit (Storage in Tanks – Inspection Schedules and Procedures) Respondent shall inspect the tank systems once each operating day for above ground portions of the tank system to detect corrosion or releases of waste.

46. Pursuant to Permit Condition IV.G.4. of the Wichita permit (Storage in Tanks – Inspection Schedules and Procedures) Respondent shall document compliance with Permit Condition IV.G. and place the documentation in the Facility operating record.

47. At the time of the Wichita inspection, the inspector observed multiple corrosion spots on the spent solvent hazardous waste tank which were not documented in the inspections Respondent was performing.

48. Respondent's failure to document instances of corrosion on that tank is a violation of Wichita Permit Conditions IV.G.3. and IV.G.4.

CONSENT AGREEMENT

49. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

50. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

51. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

52. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

53. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

54. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address:
fitzpatrick.timmery@cleanharbors.com.

Penalty Payment

55. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of fifty-five thousand seven hundred nineteen dollars (\$55,719), as set forth below.

56. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be paid using one of the electronic payment options found at <http://www.epa.gov/financial/makepayment>.

57. A copy of the confirmation of payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kelley Catlin, Attorney
catlin.kelley@epa.gov.

58. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year

compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

59. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at sherrer.dana@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Division with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

Effect of Settlement and Reservation of Rights

60. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent’s liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

61. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent’s representations to the EPA, as memorialized in paragraph directly below.

62. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

63. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

64. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed seventy-four thousand nine hundred forty three dollars (\$74,943) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

65. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

66. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

67. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

68. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

69. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the

Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

70. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

71. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

72. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Alyse Stoy
Acting Director
Enforcement and Compliance Assurance Division

Date

Kelley Catlin
Office of Regional Counsel

RESPONDENT:

Safety-Kleen Systems, Inc.

2-13-26
Date

Mori Sorenson
Signature

MORI SORENSON
Printed Name

VP ENVIRONMENTAL COMPLIANCE
Title

FINAL ORDER

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Kelley Catlin
Office of Regional Counsel
catlin.kelley@epa.gov

Kevin Snowden
Enforcement and Compliance Assurance
Division snowden.kevin@epa.gov

Copy via Email to Respondent:

Timmery Fitzpatrick
Safety-Kleen Systems, Inc.
fitzpatrick.timmery@epa.gov

Copy via Email to the States of Kansas and Nebraska:

Joe Dom (e-copy)
Director
Bureau of Waste Management
Kansas Department of Health and Environment
joe.dom@ks.gov

Jeff Walker (e-copy)
Compliance and Enforcement, Waste Reduction, and Assistance
Section Kansas Department of Health and Environment
jeff.walker@ks.gov

Nebraska Electronic Docket (e-copy)
ndeq.epainspections@nebraska.gov
Jeff Edwards (e-copy)
Nebraska Department of Environment and Energy
jeffery.edwards@nebraska.gov

Dated this _____ day of _____, _____.

Signed