

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR



IN THE MATTER OF)
)
SAFETY-KLEEN SYSTEMS, INC.,) DOCKET NO. RCRA-5-2001-001
)
)

**Order Vacating Order Granting Respondent's Motion For
Emergency Request For Preliminary Relief**

**Order On Complainant's Motion To Forward Orders To
Environmental Appeals Board**

This proceeding arises under the authority of Section 3008(a) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-32. In a Prehearing Order issued July 5, 2001, the parties were directed to file their prehearing exchange.

On August 7, 2001, Respondent filed "Respondent's Motion for Protective Order and Emergency Request for Preliminary Relief Deferring Any Response to U.S. EPA's Improper Discovery Requests Pending Disposition of This Motion" ("Motion"). In this Motion, Respondent stated that on July 27, 2001, it received a RCRA Section 3007 information request from Complainant, the United States Environmental Protection Agency (the "EPA"), which was included as Exhibit A.¹ Respondent asserted that according to the express language of this RCRA Section 3007 information request, the EPA was seeking additional information concerning the alleged operation of the chilled vent condensers at levels exceeding the RCRA Subpart AA requirements during the period from September 1, 1996, through February 28, 2000, which is the focus of the

¹ The July 25, 2001, RCRA Section 3007 information request states the request is being made because the "EPA has determined that additional information is necessary to determine the nature, extent and duration of the violations by Safety-Kleen Systems, Inc. at the Hebron Recycle Center facility." The information request requires a response on or before August 10, 2001.

EPA's claim in Count I of the Complaint in this matter. Respondent argued that the RCRA Section 3007 information request is an unauthorized request for discovery for use in the pending enforcement action that is outside the scope of the Rules of Practice. Respondent moved for a Protective Order precluding the EPA from engaging in the alleged discovery concerning the matters described in this Motion and a preliminary order deferring any response to the RCRA Section 3007 information request at issue pending disposition of the Motion.

In an Order issued on August 15, 2001, Respondent was granted the preliminary relief of deferring any response to the RCRA Section 3007 information request until the EPA served its response to the Motion on Respondent and the undersigned had a reasonable opportunity to rule on the Emergency Request for Preliminary Relief.²

On August 15, 2001, the EPA filed its Memorandum in Opposition to Respondent's Motion for Protective Order and Emergency Request for Relief.³ In its Memorandum, the EPA states that an Administrative Law Judge is without authority to review, defer, or otherwise limit the EPA's issuance of, or a respondent's response to, an information collection request issued pursuant to Section 3007 (a) of RCRA, 42 U.S.C. § 6927 (a), to a respondent in a pending administrative proceeding, prior to its issuance or to the respondent's reply to the request. The EPA is correct. *See* 40 C.F.R. § 22.19(e)(5). As such, the August 15, 2001, Order granting the preliminary relief of deferring any response to the RCRA Section 3007 information request until the EPA served its response to the Motion on Respondent and the undersigned had a reasonable opportunity to rule on the Emergency Request for Preliminary Relief is **Vacated**.⁴

Additionally, on August 17, 2001, the EPA filed a Motion to Forward Orders to the Environmental Appeals Board for Review.⁵ This motion is based on the argument that the Order granting preliminary relief was issued without authority. In view of the above Order vacating the

² On August 7, 2001, the parties were orally advised that Respondent was granted the preliminary relief of deferring any response to the RCRA Section 3007 information request until the EPA served its response to the Motion on Respondent.

³ On August 16, 2001, Respondent filed a Reply in Support of Motion for Protective Order and Emergency Request for Preliminary Relief.

⁴ The EPA is advised that under 40 C.F.R. §§ 22.4(c)(6), 22.4(c)(10), 22.17, and 22.22 the Administrative Law Judge has the authority to impose certain sanctions against a party, such as exclusion of evidence, that are not provided in the statute under which a case is commenced.

⁵ The EPA treated the oral advisement on August 7, 2001, and the August 15, 2001, Order as two separate orders. For purposes of this Order, the two "orders" are deemed to be one order.

August 15, 2001, Order, the Motion to Forward Orders to the Environmental Appeals Board for Review is now moot.

Barbara A. Gunning
Administrative Law Judge

Dated: August 24, 2001

In the Matter of Safety-Kleen Systems, Inc., Respondent
Docket No. RCRA-5-2001-001

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Vacating Order Granting Respondent's Motion For Emergency Request For Preliminary Relief and Order On Complainant's Motion to Forward Orders To Environmental Appeals Board**, dated August 24, 2001 was sent this day in the following manner to the addressees listed below.

Maria Whiting-Beale
Legal Staff Assistant

Dated: August 24, 2001

Original By Regular Mail To:

Sonja Brooks-Woodard
Regional Hearing Clerk
U.S. EPA
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy By Certified Mail Return Receipt and Facsimile:

Michael McClary, Esquire
Assistant Regional Counsel
U.S.EPA
77 West Jackson Boulevard, C-14J
Chicago, IL 60604-3590

A. Bruce White, Esquire
Karaganis, White & Magel, Ltd.
414 North Orleans Street, Suite 810
Chicago, IL 60610