

PPC 9551.1995(01)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

February 10, 1995

Mr. Basil G. Constantelos  
Vice President  
Environmental Affairs  
Safety-Kleen  
1000 North Randall Road  
Elgin, Illinois 60123-78S7

Dear Constantelos:

Thank you for your letter dated November 17, 1994 regarding the land disposal restrictions (LDR) Phase II regulation that appeared in the Federal Register on September 19, 1994. You provided some interesting ideas for the Phase II technical correction notice and proposed an implementation approach for your company to comply with the new Phase II notification requirements. These issues are discussed below.

1. Removal of treatment standards from the LDR notifications

Safety-Kleen favors the action taken in the Phase II final rule that deleted treatment standards or references to treatment standards from being required on LDR notifications. It was pointed out that parts of the regulatory language in 40 CFR 268.7 still reflected the old requirements. We appreciate you pointing this out. Furthermore, we have corrected the error in the Phase II correction notice (see 60 FR 242, column three, January 3, 1995).

The Agency agrees that the elimination of the treatment standards from the LDR notification does not lessen the substantive LDR requirements, but rather makes an administrative adjustment to lessen the paperwork burden on the regulated community. Furthermore, you suggest that EPA clarify for the states and the regulated community that the changes to the LDR notification requirements should be immediately applicable. When the Phase II requirements became effective 12/19/94, all notification requirements (including corrections made in the

technical amendment) were in place and were immediately effective.

## 2. Clarification of application of analytical test methods

Safety-Kleen states that for some waste matrices, the SW-846 test methods will not achieve detection levels near the universal treatment standards (UTS) levels. It is suggested that EPA issue guidance on what PQL is needed to demonstrate that the UTS are met. It is also suggested that EPA clarify that the application of EPA SW-846 methods may not be appropriate for analysis of all UTS in all waste matrices.

Compliance with LDR regulations is usually measured by achieving a constituent concentration level at or below the UTS for that constituent. However, when combustion technologies are used to comply with UTS for organic constituents, EPA considers nondetect values within an order of magnitude of the UTS to be in compliance (see 268.40(d)).

It is unclear from the information in your letter what type of materials create your company's detection level difficulties. Without further clarification, we are unable to issue further guidance. It should be noted that except in cases where test methods are specified in Part 268, there is no requirement that SW-846 methods be used to demonstrate compliance with the UTS.

## 3. Approach to implementing Phase II LDR requirements

Safety-Kleen has developed an implementation strategy to comply with new paperwork requirements while also assuring that UTS are met. Under 40 CFR 268.7(a)(1)(ii) in the Phase II rule, the generator must include on the LDR notification all the waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043. The majority of Safety-Kleen's managed waste will be monitored after solvent reclamation, and monitoring will include all underlying hazardous constituents. For wastes ultimately managed outside the Safety-Kleen system by other facilities, Safety-Kleen is obtaining written confirmation that these other facilities will be monitoring for all underlying hazardous constituents. Therefore, no specific constituents will be listed on the LDR notification coming from Safety-Kleen's customers (generators).

If monitoring for all underlying hazardous constituents" means all UTS constituents, such an approach complies with the new Phase II requirements. The generators of the hazardous waste will specify on their notification that they have a D001 (or other) waste and will not include on the notification any underlying hazardous constituents. Therefore, the treater, in this case Safety-Kleen, must treat and monitor for all the constituents on the UTS list (all underlying hazardous constituents).

I hope you find these responses helpful. Should you have additional questions or comments, feel free to direct them to Rhonda Craig of my staff, at (703) 308-8771.

Sincerely,

Michael Shapiro  
Director  
Office of Solid Waste

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Attachment  
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Safety-Kleen

November 17, 1994

Michael H. Shapiro, Director  
Office of Solid Waste (MS-5301)  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

RE: Phase II LDR Regulation

Dear Mr. Shapiro:

This letter provides follow-up to a November 3, 1994 meeting between Michael LeBel of Safety-Kleen Corp. and Richard Kinch, Rhonda Craig, and Doug Heimlich of the Environmental Protection Agency (EPA). During this meeting Mr. LeBel raised several issues and implementation questions regarding the September 19, 1994 Phase II Land Disposal Restriction (LDR) regulations. EPA informed Safety-Kleen of the Agency's intention to issue a technical correction to the final regulation prior to the December 19, 1994 effective date. In light of EPA's intention to issue a technical correction and Safety-Kleen's questions regarding approaches to comply with the new regulations, EPA suggested that Safety-Kleen prepare a letter outlining suggestions for technical corrections and our proposed approach for complying with the Phase II LDR regulations. In addition to looking forward to receiving EPA's response, we also suggest that our implementation approach be addressed in the correction notice.

#### ISSUES FOR TECHNICAL CORRECTION NOTICE

##### 1. Removal of Treatment Standards From LDR Notices

As the largest user of manifests and LDR notices in the U.S., Safety-Kleen welcomes the opportunity to share our experience regarding the use of LDR notices. Safety-Kleen agrees with preamble language, which states that "...EPA is thus dropping the treatment standard or reference to the treatment standard from the

LDR notification in this final rule" (59 FR 48004). However, the regulatory language in 40 CFR 268.7(a)(1) (as revised) did not incorporate new regulatory language to address this change.

Safety-Kleen suggests the following regulatory language in 40 CFR 268.7(a)(1) to address this discrepancy:

If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in 268.32 or RCRA Section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the restriction from land disposal of this waste. The notice must include the following information....

Safety-Kleen suggests that EPA clarify in the preamble that the elimination of the treatment standards on the LDR notice is not a less stringent approach to the current regulations, but rather is an administrative adjustment. The same treatment standards are in effect under the new regulation as under the old regulation. The change to the LDR notice will make it more functional and easier to use, without reduced protection of human health and the environment.

Safety-Kleen also suggests that EPA clarify for states and the regulated community and that the immediate application of the change in the LDR notice is appropriate. As with previously promulgated LDR regulations, the original LDR regulatory framework has been adjusted and improved with each subsequent regulation. Generators have the obligation to comply with existing regulations that States may be authorized to implement, but must also comply with newly promulgated Federal requirements. A clarification on the immediate use of the new LDR notice format would assist the regulated community in understanding and complying with the LDR requirements and would not reduce effectiveness of the regulations.

## 2. Clarification of Application of Analytical Test Methods

Safety-Kleen has found that for some waste matrices, the SW-846 test methods will not achieve detection levels near the UTS levels. This raises two issues. First, EPA should provide

implementation guidance on what PQL is needed to demonstrate that the UTS standards are met. Second, EPA needs to clarify that the application of EPA SW-846 Test Methods may not be appropriate for analysis of all Universal Treatment Standards (UTS) constituents in all waste matrices. EPA needs to encourage the development of improved test methods and use of alternate protocols by waste generators and Treatment, Storage, and Disposal (TSD) facilities in order to better characterize UTS constituent levels for a broad range of waste forms. Safety-Kleen suggests that EPA clarify that alternate test methods can be used without prior EPA approval with proper documentation and that their use is appropriate for a particular application and will achieve a lower detection limit.

The preamble is currently silent with respect to this issue and Safety-Kleen finds that this is problematic. Constituent analysis is a fundamental component of the implementation of the LDR rules. The regulated community needs EPA's assistance in making this system functional. Safety-Kleen has discussed these issues with Barry Lesnik and Gail Hansen of the Office of Solid Waste and we encourage you to solicit their opinion on the matter.

### 3. Approach to Implementing Phase II LDR Requirements

As described in the November 3, 1994 meeting, Safety-Kleen has developed an implementation strategy for compliance with the Phase II LDR regulations. This strategy is outlined below and we are looking forward to any comments EPA may have regarding our approach.

Safety-Kleen is the world's largest recycler of solvents and other contaminated fluids, providing environmentally-beneficial waste management services to nearly 400,000 customers in the U.S. While Safety-Kleen offers a range of waste recycling and energy recovery services, we specialize in servicing smaller businesses and smaller waste generators. Approximately, 95 percent of our customers are small quantity generators (100 to 1,000 kg/mo) or conditionally exempt small quantity generators (less than 100 kg/mo). Because of the substantial paperwork burden on the small businesses that constitutes the vast majority of our customer base, Safety-Kleen often provides implementation guidance on manifesting, LDR notices, and waste analysis information as a part of our service.

The majority of the waste streams accepted by Safety-Kleen are

handled through our 182 accumulation/collection facilities (branches). The majority of the waste streams remain in the containers while being temporarily stored at one of our branches. Only one waste stream, a petroleum naphtha (mineral spirits) based solvent, is bulked at most of our branch locations. Some wastes from larger generators bypass our branch system and are transported directly to one of our recycle facilities for recovery operations.

The majority of the waste materials entering the Safety-Kleen system are recycled into usable products (e.g., parts washer solvent, paint thinners, motor oils, etc). Where appropriate, residues from recycling, along with other non-recoverable materials with BTU value, are recycled for energy recovery in our fuel blending operations. The useful products produced from the recycling processes and the cement made in the kilns supplied with our hazardous waste fuels are products and are not subject to regulation under the RCRA framework, and thus are not subject to the LDR requirements. Cement kiln dust (CKD) is subject to regulation under 40 CFR 266.112 and will be tested in accordance with these requirements.

Some treatment residues and appropriate customer wastes are sent to hazardous waste incineration, off-site chemical/physical treatment facilities, or third-party treatment, storage, and disposal facilities. Safety-Kleen is in the process of obtaining written acknowledgments from all outside facilities receiving these wastes that all underlying UTS constituents will be analyzed for at their facilities, unless otherwise specified on an LDR notice with a given shipment of waste.

The Phase II LDR rule requires that the LDR notice include "the waste constituents that the treater will monitor for, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043" (40 CFR 268.7(a)(1)(ii)). Safety-Kleen plans to comply with this regulation by monitoring for all underlying UTS constituents. For the majority of Safety-Kleen managed waste, this monitoring will be conducted on wastes and residuals after reclamation. For wastes ultimately managed outside the Safety-Kleen system by other facilities, Safety-Kleen will have written confirmation that these other facilities will be monitoring for underlying UTS constituents.

The underlying UTS constituents will be monitored during the waste management process. No specific constituents will be listed on the LDR notice coming from our customers, the original generator. These constituents will be identified, by Safety-Kleen or the receiving facility, prior to ultimate waste or residue disposal. For recycling for re-use waste streams, the recycling process results in regenerated clean product and treatment residues levels that are more concentrated than the original waste. For the wastes leaving the Safety-Kleen system, we are requiring that the receiving facilities monitor for the presence of underlying constituents, and treat as necessary, to ensure that all UTS are met prior to land disposal. We believe that there will be no loss of enforcement capabilities under this approach that a clarification should be presented in the technical correction.

Safety-Kleen appreciates the opportunity to provide comments for the Phase II LDR correction notice. We will also be anxious to receive EPA's feedback regarding our implementation strategy. Please contact me at (708) 468-2217 or Catherine McCord at (708) 468-2245 if you have any questions.

Sincerely yours,

Basil G. Constantelos  
Vice President  
Environmental Affairs

cc: Richard J. Kinch  
Chief, Waste Treatment Branch  
Office of Solid Waste (MS-5302W)  
U.S. Environmental Protection Agency  
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Arlington, Virginia 22202