

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Steven J. Viggiani 3/29/17
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2017-0006

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Safety-Kleen Systems, Inc.
167 Mill Street
Cranston, RI 02905

Total Dollar Amount of Receivable \$ 45,268 Due Date: _____

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

_____ Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

RECEIVED

MAR 28 2017

EPA ORC
Office of Regional Hearing Clerk

March 28, 2017

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

Re: In the Matter of: Safety-Kleen Systems, Inc.
Docket No. CAA-01-2017-0006

Dear Ms. Santiago:

Please accept for filing the attached original and one copy of a Consent Agreement and Final Order ("CAFO") settling the above-captioned Clean Air Act administrative enforcement case against Safety-Kleen Systems, Inc. ("Safety-Kleen") at its hazardous waste treatment, storage, and disposal in Cranston, Rhode Island. The CAFO has been executed by the parties and was signed by the Regional Judicial Officer on March 27, 2017.

Please note that this enforcement action has no accompanying administrative complaint. Instead, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), this CAFO simultaneously commences and settles the action. A related CAFO resolving Resource Conservation and Recovery Act violations at Safety-Kleen's Cranston facility has also been signed by the parties and the Regional Judicial Office and will be presented for filing via separate cover.

If you have any questions regarding this CAFO, please call me at (617) 918-1729. Thank you for your assistance with this matter.

Sincerely,

Steven J. Viggiani
Senior Enforcement Counsel
EPA Region 1

Attachments (original and one copy)

cc: 1. Timmery Fitzpatrick, Esq.
2. General Counsel, Safety-Kleen Systems, Inc.

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)



U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

MAR 28 2017

EPA ORC
Office of Regional Hearing Clerk

In the Matter of:

Safety-Kleen Systems, Inc.
167 Mill Street
Cranston, Rhode Island 02905

Docket No. CAA-01-2017-0006

Proceeding under Section
113(d) of the Clean Air Act

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (“Act” or “CAA”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the U.S. Environmental Protection Agency (“EPA”), Region 1. On EPA’s behalf, Susan Studlien, Director of the EPA Region 1 Office of Environmental Stewardship, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is Safety-Kleen Systems, Inc. (“Safety-Kleen”), a corporation doing business in the State of Rhode Island. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement” or “Agreement”) and the attached final order (“Final Order” or “Order”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

6. EPA and the United States Department of Justice have jointly determined that this matter is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d)(1); 40 C.F.R. § 19.4.

7. The Regional Judicial Officer is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(a) and 22.18(b).

8. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

9. Section 112 of the CAA, 42 U.S.C. § 7412, lists various hazardous air pollutants and requires EPA to establish national emissions standards for sources that emit these pollutants.

10. Pursuant to Section 112 of the Act, EPA has promulgated the National Emission Standards for Hazardous Air Pollutants From Off-Site Waste and Recovery Operations, found at 40 C.F.R. Part 63, Subpart DD (“Subpart DD”).

11. Pursuant to Section 112 of the Act, EPA has also promulgated the National Emissions Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline), found at 40 C.F.R. Part 63, Subpart EEEE (“Subpart EEEE”).

12. Both Subpart DD and Subpart EEEE incorporate various general provisions and requirements contained in 40 C.F.R. Part 63, Subpart A, §§ 63.1 - .16 (“Subpart A”), which was also promulgated pursuant to CAA Section 112.

13. Subchapter V of the CAA (“Title V”), 42 U.S.C. §§ 7661 - 7661f, establishes operating permit programs under the CAA. States must develop and submit operating permit programs for EPA approval. Rhode Island has an approved Title V operating permit program, set out in RI APC Regulation 29. See 66 Fed. Reg. 49839 (Oct. 1, 2001).

D. BACKGROUND FACTS

14. Since 2007, Safety-Kleen has owned and operated a facility located at 167 Mill Street in Cranston, Rhode Island (“Cranston Facility” or “Facility”), that receives, stores, treats and disposes of various hazardous and non-hazardous wastes.

15. The Cranston Facility began operating in the mid-1970s under the name Chem-Pak. In 2003, United Oil Recovery Inc. (“United Oil”) purchased the Facility. In 2007, United Oil sold the Facility to Safety-Kleen.

16. On December 28, 2012, Clean Harbors, Inc., a publicly-traded Massachusetts corporation, completed a transaction whereby Safety-Kleen, Inc. and its subsidiaries, including Safety-Kleen Systems, Inc., were acquired by Clean Harbors, Inc. Since that date, Safety-Kleen, Inc., and its subsidiaries, including Safety-Kleen Systems, Inc., have been wholly-owned subsidiaries of Clean Harbors, Inc.

17. The Cranston Facility began treating and storing hazardous waste in 1978, applied for a hazardous waste treatment, storage and disposal facility (“TSDF”) permit from the Rhode Island Department of Environmental Management (“RI DEM”) in 1984, and was issued its first TSDF permit in 1986. The Cranston Facility’s latest TSDF permit was issued by RI DEM to Safety-Kleen on July 30, 2012. Safety-Kleen applied for a new TSDF permit for the Cranston Facility via a permit renewal application that was received by RI DEM on July 7, 2015.

18. On December 4, 2013, EPA Region 1 conducted a CAA compliance inspection at the Cranston Facility.

19. On June 6, 2014, EPA Region 1 issued an Information Request to Safety-Kleen and to Clean Harbors Environmental Services, Inc. (“Clean Harbors Environmental”), for information regarding the Cranston Facility’s compliance with the CAA, the Resource Conservation and Recovery Act (“RCRA”), and these statutes’ implementing regulations.

20. Clean Harbors Environmental submitted responses to the Information Request in August and September 2014.

21. On January 14, 2015, EPA Region 1 issued a CAA Notice of Violation to Safety-Kleen identifying various alleged CAA-related violations at the Cranston Facility, including violations of Subparts DD and EEEE and of Title V.

22. Since the issuance of the NOV, Safety-Kleen and Clean Harbors Environmental have provided various additional compliance information for the Cranston Facility in response to a second CAA and RCRA Information Request and other EPA Region 1 inquiries.

E. ALLEGED VIOLATIONS OF LAW

1. Subpart DD: Applicability

23. Subpart DD applies to the owner and operator of any facility (“plant site”) if two separate conditions are met. See 40 C.F.R. § 63.680. The plant site must be a major source of hazardous air pollutants (“HAPs”) under CAA regulations in Subpart A, and must receive “offsite materials” that meet any one of six triggering conditions, including regulation as a TSDF pursuant to RCRA regulations at 40 C.F.R. Part 264 or Part 265. See 40 C.F.R. §§ 63.680(a)(1) and (a)(2)(i). Generally, “off-site material” includes wastes, used oil, or used solvents that are delivered or transferred to the facility (not produced or generated within the plant site) and that contain one or more of the HAPs listed in Subpart DD’s Table 1. See 40 C.F.R. §§ 63.680(b)(1)(i) - (iii).

24. Beginning from no later than December 2011, the Cranston Facility has been a major source of HAPs and has operated as a TSDF under RCRA, with waste management operations receiving off-site materials that contain one or more Table 1-listed HAPs.

25. Accordingly, the Cranston Facility has been and remains subject to Subpart DD.

26. Regulated “affected sources” at a Subpart DD-subject facility such as the Cranston Facility include “off-site material management units,” “process vents,” and “equipment leaks.” See 40 C.F.R. § 63.680(c).

27. “Off-site material management units” are defined to include tanks and containers used to manage off-site materials. Tanks or containers equipped with a vent serving as a process vent are regulated as “process vents.” See 40 C.F.R. § 63.680(c)(1).

28. “Process vents” are defined to include “the entire group of process equipment associated with the process vents” for various waste treatment processes, including a “[d]istillation process used for the treatment, recycling or recovery of off-site material.” See 40 C.F.R. §§ 63.680(c)(2) and (c)(2)(i).

29. From prior to December 2011 until November 2013, the Cranston Facility distilled HAP-containing wastes and used solvents, such as waste perchloroethylene and degreaser solvents, using a distiller connected by vents and piping to four waste storage tanks (Tanks 10 to 13), a blending tank (Tank 14), and four distillate receiving tanks (Tanks 15 to 18). HAP-containing emissions from this distillation process have been routed through a regenerative carbon adsorption system and discharged continuously or intermittently through one or more process vents into the atmosphere.

30. Accordingly, the Cranston Facility’s distillation process was an “affected source” under Subpart DD and was subject to Subpart DD’s standards and requirements for process vents set out in 40 C.F.R. §§ 63.690 and 63.693 from no later than December 2011 until November 2013. The Cranston Facility’s tanks that fed into the distillation process are also an “affected source” that were subject until November 2013 to Subpart DD’s standards and requirements for process vents as part of the process equipment associated with the distillation process. Some or all of these tanks have remained subject from November 2013 to the present to Subpart DD’s standards and requirements for off-site waste management units set out in 40 C.F.R. § 63.685.

2. Subpart DD: Alleged Violations

a. Failure to Provide Initial Notification

31. Subpart DD requires an owner and operator of an affected source to submit various notices and reports regarding Subpart DD compliance, including an initial notification pursuant to 40 C.F.R. §§ 63.697(a)(1) and 60.9(b)(1).

32. Safety-Kleen did not submit a Subpart DD initial notification to EPA until February 2017. Accordingly, Safety-Kleen violated 40 C.F.R. §§ 63.697(a)(1) and 60.9(b)(1).

b. Failure to Provide Notice of Compliance Status

33. Subpart DD also requires an owner and operator of an affected source to submit a notice of compliance status (“NOCS”) pursuant to 40 C.F.R. §§ 63.697(a)(1) and 60.9(h).

34. To date, Safety-Kleen has not submitted a Subpart DD NOCS to EPA. Accordingly, Safety-Kleen has violated 40 C.F.R. §§ 63.697(a)(1) and 60.9(h).

c. Failure to Meet Air Emission Control Rate

35. Subpart DD’s standards for process vents set out in 40 C.F.R. § 63.690 require that vent stream emissions be routed through a closed-vent system to a control device that meets the standards set out in 40 C.F.R. § 63.693.

36. Subpart DD’s standards for closed-vent systems and control devices require, among other things, that with certain limited exceptions the control device must be operating whenever gases or vapors containing HAP are vented through the closed-vent system to the control device. See 40 C.F.R. § 63.693(b)(3). If a carbon adsorption system is used as the control device, the carbon adsorption system must recover 95% or more, on a weight basis, of

the total organic compounds (less methane and ethane) or of the total HAPs listed in Subpart DD's Table 1 that are contained in the vent stream entering the carbon adsorption system. See 40 C.F.R. § 63.693(d)(1).

37. Subpart DD's standards for off-site waste management units set out in 40 C.F.R. § 63.685 contain requirements for tanks using "Tank Level 1 controls." See 40 C.F.R. § 63.685(c). Tanks using Tank Level 1 controls whose air emissions are controlled through a closed-vent system and control device must meet the same 40 C.F.R. § 63.693 requirements cited above for process vent emissions routed through a closed-vent system and control device, including the 95% control requirement for emissions entering a carbon adsorption system. See 40 C.F.R. §§ 63.685(c)(2)(i), (c)(2)(ii), (d)(3), and (g)(1)(iv), and 40 C.F.R. § 63.693(d)(1).

38. The Cranston Facility's carbon adsorption system failed to meet the above-cited 95% control rate requirement for process vent emissions from December 8, 2011 to November 2013 when the Cranston Facility's distillation system ceased operation. Further, on at least 12 separate days in 2014, the carbon adsorption system failed to meet the above-cited 95% control rate requirement for tank emissions. Accordingly, Safety-Kleen has violated the requirements of 40 C.F.R. §§ 63.685 and 63.693.

3. Subpart EEEE: Applicability

39. Subpart EEEE applies to the owner and operator of any facility ("plant site") that is a major source of HAP emissions, and that is located at, or is part of, a non-gasoline organic liquids distribution ("OLD") operation. See 40 C.F.R. § 63.2334. "Organic liquids" are defined to include any "non-crude oil liquid or liquid mixture that contains 5 percent by weight or greater of the organic HAP listed in Table 1 [of Subpart EEEE]." See 40 C.F.R. § 63.2406. An OLD

operation is defined as “the combination of activities and equipment used to store or transfer organic liquids into, out of, or within a plant site” Id.

40. Beginning from no later than December 2011, the Cranston Facility has been a major source of HAP and has stored and transferred Subpart EEEE-listed organic liquids such as ethylene glycol, perchloroethylene (tetrachloroethylene) and methanol.

41. Accordingly, the Cranston Facility has been and remains subject to Subpart EEEE.

42. Regulated “affected sources” at a Subpart EEEE-subject facility such as the Cranston Facility include “[a]ll storage tanks storing organic liquids.” See 40 C.F.R. § 63.2338(b)(1). The Cranston Facility contains at least two organic liquid storage tanks – identified to EPA Region 1 as Tanks 17 and 18 – that were affected sources under Subpart EEEE beginning from no later than December 2011 through at least November 2013, and contains other storage tanks that have continued to store organic liquids from no later than November 2013 to the present.

4. Subpart EEEE: Alleged Violations

a. Failure to Provide Initial Notification

43. Subpart EEEE requires an owner and operator of an affected source to submit various notices and reports regarding Subpart EEEE compliance, including an initial notification pursuant to 40 C.F.R. § 63.2382(b)(2).

44. Safety-Kleen did not submit a Subpart EEEE initial notification to EPA until February 2017. Accordingly, Safety-Kleen violated 40 C.F.R. § 63.2382(b)(2).

b. Failure to Provide Notice of Compliance Status

45. Subpart EEEE also requires an owner and operator of an affected source to submit a notice of compliance status (“NOCS”) pursuant to 40 C.F.R. § 63.2382(d) and Subpart EEEE Table 12’s citation to 40 C.F.R. § 63.9(h). Safety-Kleen was required to submit its NOCS to EPA for the Cranston Facility by no later than July 30, 2012.

46. To date, Safety-Kleen has not submitted a Subpart EEEE NOCS to EPA. Accordingly, Safety-Kleen has violated 40 C.F.R. § 63.2382(d) and Subpart EEEE’s Table 12.

c. Failure to Submit Semi-Annual Reports

47. Subpart EEEE requires an owner and operator of an affected source to submit semiannual compliance reports to EPA. See 40 C.F.R. §§ 63.2386 and Subpart EEEE’s Table 11. Safety-Kleen was required to submit semiannual compliance reports to EPA for the Cranston Facility beginning from no later than 2012.

48. To date, Safety-Kleen has failed to submit any Subpart EEEE semiannual compliance reports to EPA. Accordingly, Safety-Kleen has violated 40 C.F.R. §§ 63.2386 and Subpart EEEE’s Table 11.

d. Failure to Meet Air Emission Control Rate

49. Subpart EEEE provides that an organic liquid storage tank with a capacity of 5,000 to 50,000 gallons, and an average true vapor pressure of the total Table 1 HAPs in its stored organic liquids of 4.0 psia or more, must comply with the emission limits set out in Table 2 of Subpart EEEE. See 40 C.F.R. § 63.2346 and Table 2.

50. At the Cranston Facility, Tanks 17 and 18 each have a capacity of 5,000 gallons and have stored organic liquids having an annual average true vapor pressure of total Table 1

HAPs of 4.0 psia or more beginning from no later than December 2011 through at least November 2013.

51. Table 2 of Subpart EEEE requires that storage tanks such as the Cranston Facility's Tanks 17 and 18 reduce emissions of total organic HAP by at least 95% by weight by venting emissions through a closed vent system to a control device meeting the applicable requirements of 40 C.F.R. Part 63, Subpart SS (which includes carbon adsorbers), or by complying with specified work practice standards specified in Table 4 of Subpart EEEE.

52. The specified Table 4 work practice standards (which pertain to floating roof tanks, emissions routing to a fuel gas system or process, and vapor balancing) are not applicable to Tanks 17 and 18.

53. As described above in Section E.2.c, the Cranston Facility's carbon adsorption system, which controls emissions from Tanks 17 and 18, failed to meet its required 95% HAP reduction rate from December 8, 2011 to November 2013.

54. Accordingly, Safety-Kleen has violated 40 C.F.R. § 63.2346 and Table 2 of Subpart EEEE.

5. CAA Title V Applicability and Alleged Violations

55. The CAA and its implementing regulations require a major source to apply for a Title V operating permit no later than 12 months after becoming subject to a state's approved operating permit program. See Section 503(c) of the CAA, 42 U.S.C. § 7661b(c), and 40 C.F.R. § 70.5(a)(1). The CAA prohibits major sources from operating except in compliance with a permit issued by a Title V permitting authority. See Section 502(a) of the CAA, 42 U.S.C. § 7661a(a) (Violations).

56. Rhode Island's Title V permit program, which is set out in Rhode Island Air Pollution Control Regulation 29, was fully approved by EPA on November 30, 2001. See 66 Fed. Reg. 49839 (Oct. 1, 2001).

57. The Cranston Facility is a major HAP source for which Safety-Kleen was required to apply for a Title V operating permit no later than December 2012.

58. To date, Safety-Kleen has not applied for or obtained a Title V operating permit from Rhode Island for the Cranston Facility, and has continued to operate the Cranston Facility without a Title V permit. Accordingly, Safety-Kleen has violated and continues to violate Sections 502(a) and 503(c) of the CAA, and 40 C.F.R. § 70.5(a)(1).

F. TERMS OF CONSENT AGREEMENT

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

- (a) admits that EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the specific factual allegations set out in Section D and the alleged violations of law set out in Section E of this Agreement;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this Agreement;
- (f) consents to any stated permit action;

- (g) waives any right to contest the alleged violations of law set forth in Sections E of this Agreement; and
- (h) waives its rights to appeal the Order accompanying this Agreement.

60. For the purpose of this proceeding, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the District of Rhode Island; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

61. Penalty Payment

- (a) EPA has compromised the maximum civil penalty of \$45,268 per day per violation authorized in this matter, applying Section 113(d)(2)(B) of the Act, 42 U.S.C. § 7413(d)(2)(B), and the factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), and the 1991 Clean Air Act Stationary Source Civil Penalty Policy, including Respondent's significant cooperation in agreeing to perform the non-penalty obligations in Appendix 1 to this Agreement.
- (b) In light of the particular facts and circumstances of this matter, with specific reference to Section 113(d)(2)(B) of the Act, 42 U.S.C. § 7413(d)(2)(B), and the relevant penalty factors set out in Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e), and considering Respondent's significant cooperation in agreeing to perform the non-penalty obligations in Appendix 1, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in the Complaint and Section C of this Agreement in the amount of \$369,517.
- (c) Respondent agrees to pay the civil penalty of \$369,517 within 30 calendar days of the Effective Date of this Agreement.
- (d) Respondent agrees to make payment by submitting a bank, cashier's, or certified check, to the order of the "Treasurer, United States of America," in the amount of \$369,517 to:

U.S. Environmental Protection Agency

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

Respondent shall note the case name and docket number of this action on the check and in an accompanying cover letter, and shall simultaneously provide copies of the check and cover letter to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square
Suite 100, Mail Code ORA18-1
Boston, MA 02109-3912

and

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
5 Post Office Square
Suite 100, Mail Code OES04-3
Boston, MA 02109-3912

62. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- (d) suspend or revoke Respondent's licenses or other privileges; or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

63. Conditions. As a condition of settlement, Respondent agrees to comply with the non-penalty provisions of Appendix 1 (Terms of Compliance) as of the Effective Date of this Agreement. Appendix 1 is attached hereto and incorporated herein by reference. Respondent shall comply with Appendix 1 beginning with the Effective Date of this CAFO.

- (a) Respondent shall be liable for stipulated penalties in the amount of \$1,000 for each day for the first through thirtieth day for each failure to perform any action required within the time frames specified in Appendix 1, Sections B through E (except as extended under Appendix 1, Section F), and \$2,000 for each day thereafter for each failure to perform such action.
- (b) Respondent shall pay stipulated penalties plus any interest due thereupon within fifteen (15) days of receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 61(d) above. EPA may, in its sole discretion,

elect not to seek stipulated penalties or to compromise any portion of stipulated penalties that accrue pursuant to this CAFO.

64. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraph 63 and Appendix 1 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section E of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

65. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 64, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Cranston Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA Region 1. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless EPA has provided written approval of the release of said obligations or liabilities.

66. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

67. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

68. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

69. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

70. Except as qualified by Paragraph 62, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

71. All notices and submissions required by this Order shall be sent to:

For EPA Region 1:

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Suite 100 Mail Code OES04-3
5 Post Office Square
Boston, MA 02109-3912
or
viggiani.steven@epa.gov

For Respondent:

Timmery A. Fitzpatrick
Senior Environmental Attorney
Clean Harbors Environmental Services
P.O. Box 9149
42 Longwater Drive
Norwell, MA 02061-9149
or
fitzpatrick.timmery@cleanharbors.com

and

Safety-Kleen Systems, Inc.
Attn: General Counsel
42 Longwater Drive
Norwell, MA 02061-9149

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

72. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above in Section E of this Agreement.

73. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

74. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter herein.

75. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

76. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$95,284 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

77. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

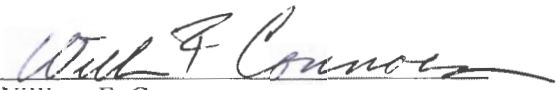
78. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

H. EFFECTIVE DATE

79. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement, In the Matter of Safety-Kleen Systems, Inc., Docket No. CAA-01-2017-0006, is Hereby Agreed to and Approved for Entry.

FOR RESPONDENT:



William F. Connors
Senior Vice President
42 Longwater Drive
Norwell, MA 02061-9149

3/20/17
Date

Respondent's Federal Tax Identification Number: 39-609-0019

The foregoing Consent Agreement, In the Matter of Safety-Kleen Systems, Inc., Docket No. CAA-01-2017-0006, is Hereby Agreed to and Approved for Entry.

FOR COMPLAINANT:

Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100, Mail Code OES04-3
Boston, MA 02109-3912

03/23/2017
Date

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:

Safety-Kleen Systems, Inc.
167 Mill Street
Cranston, Rhode Island 02905,

Proceeding under Section
113(d) of the Clean Air Act

Docket No. CAA-01-2017-0006

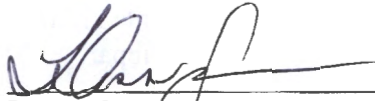
FINAL ORDER

In accordance with 40 C.F.R. § 22.18(b) of the Consolidated Rules, the parties to this matter have forwarded the foregoing executed Consent Agreement for final approval. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes EPA to issue an administrative penalty to enforce the requirements of the CAA. In addition, Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), authorizes EPA to compromise the maximum civil penalty of \$45,268 per day per violation by applying the penalty factors set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), to the facts and circumstances of this case, including Respondent Safety-Kleen's significant cooperation to date and agreement to perform non-penalty conditions. Pursuant to these provisions, Complainant EPA Region 1 has modified the maximum civil penalty and imposed the conditions described in Section F and Appendix 1 of the Consent Agreement. Respondent has consented to the terms of this Consent Agreement.

Pursuant to 40 C.F.R. § 22.18(b) of the Consolidated Rules and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Consent Agreement is incorporated by reference into this Final Order

and is hereby ratified. The Respondent Safety-Kleen is ordered to pay the civil penalty amount in the amount of \$369,517 in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED:



LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100, Mail Code ORC-18
Boston, MA 02109-3912

3/27/17
Date

APPENDIX 1: TERMS OF COMPLIANCE

A. General Subpart DD/EEEE Requirements

1. Respondent Safety-Kleen Systems, Inc., shall comply at Respondent's waste treatment, storage and disposal facility in Cranston, Rhode Island ("Cranston Facility") with all applicable requirements of the National Emission Standards for Hazardous Air Pollutants From Off-Site Waste and Recovery Operations, found at 40 C.F.R. Part 63, Subpart DD ("Subpart DD"), and the National Emissions Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline), found at 40 C.F.R. Part 63, Subpart EEEE ("Subpart EEEE"), and with applicable regulatory requirements referenced therein, including but not limited to those cited below in this Appendix.

B. DD/EEEE Notice Requirements

2. Within 60 days after the Effective Date of the CAFO, Respondent shall submit a Subpart DD notice of compliance status ("NOCS") to EPA Region 1 in accordance with 40 C.F.R. §§ 63.697(a)(1) and 60.9(h). If necessary, Respondent shall provide any information that could not be included in the NOCS in a supplemental notice to be submitted to EPA Region 1 no later than 60 days after the original NOCS submission.

3. Within 120 days after the Effective Date of the CAFO, Respondent shall submit a Subpart EEEE NOCS to EPA Region 1 in accordance with 40 C.F.R. § 63.2382(d) and Subpart EEEE Table 12's citation to 40 C.F.R. § 63.9(h). If necessary, Respondent shall provide any information that could not be included in the original NOCS in a supplemental notice to be submitted to EPA Region 1 no later than 120 days after the original NOCS submission.

4. By no later than July 31, 2017, Respondent shall submit its first Subpart EEEE semi-annual compliance report to EPA Region 1, in accordance with 40 C.F.R. § 63.2386 and Subpart EEEE's Table 11. This first report shall cover the period from the Effective Date of the CAFO through June 30, 2017.

C. Replacement of Existing Regenerative Carbon Adsorption System

5. By no later than July 21, 2017, Respondent shall replace the Cranston Facility's existing regenerative carbon adsorption system, which is used to comply with various Subpart DD requirements, with a new non-regenerative carbon adsorption system that shall control emissions (through a closed-vent system) from the same tanks that are currently controlled by the existing regenerative system. The new non-regenerative system shall fully comply with all applicable requirements of Subpart DD, including the 95% emission control rate set out in 40 C.F.R. §§ 63.685 and 63.693, and the monitoring requirements for non-regenerative carbon adsorption systems set out in 40 C.F.R. § 63.693.

6. By no later than December 1, 2017, Respondent shall complete its initial compliance demonstration of the above-described non-regenerative carbon adsorption system, including but not limited to demonstrating that the system meets its 95% emission control rate, in accordance with the requirements of 40 C.F.R. § 63.693(d)(2) and Subpart DD's Table 2. Respondent shall provide a report to EPA Region 1 containing the results of the compliance demonstration as part of Respondent's Subpart DD NOCS (described in Paragraph 2 above), or by no later than January 10, 2018, whichever is earlier.

D. Non-Regenerative Carbon Adsorption System for Tanks 9C and 9D

7. By no later than June 20, 2017, Respondent shall install and commence the full operation of a non-regenerative carbon adsorption system in order to comply with Subpart EEEE air emission requirements for Tanks 9C and 9D (and loading racks associated with these tanks) at the Cranston Facility. The non-regenerative carbon adsorption system shall meet a 98% HAP control rate for emissions from these tanks.

8. By no later than November 1, 2017, Respondent shall complete its initial compliance demonstration of the above-described non-regenerative carbon system, including but not limited to demonstrating that the system meets a 98% HAP emission control rate, in accordance with the requirements of 40 C.F.R. § 63.2354 and Subpart EEEE's Table 5. Respondent shall provide a report to EPA Region 1 containing the results of the compliance demonstration as part of Respondent's Subpart EEEE NOCS (described in Paragraph 3 above), or by no later than December 10, 2017, whichever is earlier.

E. CAA Title V Permit Application

9. In accordance with Section 503 of the CAA, 42 U.S.C. § 7661b, and the approved Rhode Island Title V permit program set out in RI APC Regulation 29, Respondent shall apply for a CAA Title V operating permit for the Facility from the Rhode Island Department of Environmental Management ("RI DEM"). Respondent shall submit its Title V operating permit application to the RI DEM within 180 days after the Effective Date of this CAFO, or as otherwise agreed to in writing by EPA Region 1 and Respondent. Respondent's permit application shall include all Subpart DD and Subpart EEEE requirements applicable to the Facility, and shall comply with all applicable requirements set out in RI APC Regulation 29. If RI DEM should request or require additional information related to the application, Respondent shall supply the information within any deadlines set by RI DEM.

F. Force Majeure Provisions

10. A "force majeure event" is defined as an event arising from circumstances beyond Respondent's control that delays the performance of any requirement of Sections C and D of this Appendix, despite Respondent's best efforts to avoid or minimize such delay. Force majeure events shall not include unexpected or increased costs, changed financial circumstances, change of ownership of Respondent, or Respondent's financial inability to meet any requirement of the CAFO.

11. Respondent shall provide notice orally or by electronic transmission to Complainant as soon as possible, but not later than 72 hours after the time that Respondent first knew, or by exercising due diligence reasonably should have known, of a claimed force majeure event. Within seven days after providing the above-described initial notice, Respondent shall also provide written notice to Complainant containing a detailed description of the following: (a) the expected duration of any delay; (b) the cause(s) of any delay; (c) the actions taken or planned to be taken to prevent or minimize any delay; (d) a schedule for implementing those actions; and (e) Respondent's rationale for attributing any delay to a force majeure event. Failure by Respondent to comply with the notice requirements of this Paragraph shall constitute a waiver of Respondent's right to request a performance extension based on the claimed force majeure event.

12. If Complainant and Respondent agree that a force majeure event has occurred, the time for the requirement's performance shall be extended for a period no longer than the delay resulting from the force majeure event. An extension of time for performing one requirement of Section C or Section D of this Appendix shall not automatically extend the time for performing other requirements. If Complainant does not agree regarding (a) the occurrence of the claimed force majeure event, (b) the duration of delay caused by the event, or (c) Respondent's compliance with the notice provisions of Paragraph 11 above, Complainant will notify Respondent in writing of its decision, which shall be binding on both parties except as provided below.

13. Within 10 days after receipt of the above-described written decision, Respondent may elect to provide written notice to Complainant objecting to the decision. Respondent's written notice shall contain a detailed description of Respondent's objections(s) and shall include any relevant supporting information or documentation. Upon Complainant's receipt of Respondent's written objection notice, the parties shall conduct informal negotiations for up to fifteen days, or for a longer period if mutually agreed to by the parties. If the parties agree to resolve the matter during this period, the agreement shall be memorialized in writing and shall be binding on both parties. If no agreement is reached during this time period, Respondent may elect to request a meeting with the Director of EPA Region 1's Office of Environmental Stewardship, or with the Director's designee, in order for Respondent to make an oral presentation of its position. This meeting shall be held within 15 days after the end of the informal negotiations period. Within 10 days after this meeting, the Director or designee shall notify Respondent in writing of their decision, which shall be binding on both parties.

CERTIFICATE OF SERVICE

I certify that I hand-delivered to the office of the Regional Hearing Clerk of EPA Region 1 the original and one copy of the final Consent Agreement and Final Order (“CAFO”) in the above-captioned case, together with a cover letter, and arranged to send copies of the CAFO and letter via mail to Respondent at the addresses set forth below:

HAND-DELIVERY: (original and two copies)

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

VIA FIRST CLASS MAIL:

Timmery A. Fitzpatrick
Senior Environmental Attorney
Clean Harbors Environmental Services
P.O. Box 9149
42 Longwater Drive
Norwell, MA 02061-9149

and

Safety-Kleen Systems, Inc.
Attn: General Counsel
42 Longwater Drive
Norwell, MA 02061-9149



Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1

3/28/17
Date