

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
BEFORE THE REGIONAL ADMINISTRATOR



\_\_\_\_\_)  
In the Matter of: )  
)  
Safety-Kleen Systems, Inc. )  
5360 Legacy Drive, Building 2 )  
Suite 100 )  
Plano, Texas 75024 )  
)  
Respondent )  
\_\_\_\_\_)

Docket No. TSCA-01-2010-0051

**CONSENT AGREEMENT AND FINAL ORDER**

The Regional Administrator of the United States Environmental Protection Agency, Region 1 (“EPA” or “Region”) issues this Consent Agreement and Final Order (“CAFO”) to Safety-Kleen Systems, Inc. (“Safety-Kleen” or “Respondent”), pursuant to 40 C.F.R. § 22.13(b) of 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 (“Consolidated Rules of Practice”). This CAFO resolves Respondent’s liability for alleged violations of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 *et seq.*, as well as the federal regulations promulgated thereunder, “Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions,” 40 C.F.R. Part 761.

EPA and Respondent agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b). EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

**I. PRELIMINARY STATEMENT**

1. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614.

**A. TSCA STATUTORY AND REGULATORY AUTHORITY**

2. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of civil penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614.

3. Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. § 2614(1)(B) and (C) make it unlawful for any person to fail to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or any rule promulgated under that section.

4. The “Polychlorinated Biphenyls (“PCBs”) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions,” 40 C.F.R. Part 761 (“PCB regulations”) were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

5. The PCB regulations establish “prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” 40 C.F.R. § 761.1(a).

6. The PCB regulations at 40 C.F.R. § 761.3 define “PCB” as “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance.”

7. Pursuant to 40 C.F.R. § 761.3, “PCB waste” constitutes those PCBs and PCB Items subject to the disposal requirements of 40 C.F.R. Part 761, Subpart D.

8. Forty C.F.R. Part 761, Subpart D, sets forth disposal requirements for PCBs and PCB Items at concentrations of 50 ppm or greater.

9. Pursuant to 40 C.F.R. § 761.1(b)(5) (anti-dilution provision) and 40 C.F.R. § 761.20(e)(2)(ii) (testing of used fuel oil), where PCBs at a concentration of 50 ppm or greater have been added to a container, the container must be considered as having a PCB concentration of 50 ppm or greater, regardless of dilution.

10. The PCB regulations at 40 C.F.R. § 761.3 define a “generator of PCB waste” as “any person whose act or process produces PCBs that are regulated for disposal under subpart D of this part, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of subpart D of this part.”

11. Pursuant to 40 C.F.R. § 761.207, a generator who relinquishes control over PCB wastes, as defined in 40 C.F.R. § 761.3, by transporting or offering to transport PCB waste for commercial offsite storage or offsite disposal shall prepare a manifest on EPA Form 8700-22, specifying for each bulk load of PCBs, the identity of the PCB waste, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste.

## **II. GENERAL ALLEGATIONS**

12. Respondent is a corporation incorporated under the laws of Wisconsin, with its principal place of business in Plano, Texas.

13. Respondent is a “person,” as defined by 40 C.F.R. § 761.3, subject to TSCA and the PCB regulations.

14. Respondent owns and operates facilities providing industrial waste management, oil recycling, and re-refining services in Marlborough, Massachusetts; Barre, Vermont; and Portland, Connecticut.

**A. Marlborough, Massachusetts Facility**

15. On November 24, 2008, Safety-Kleen shipped offsite for recycling from its Marlborough, Massachusetts facility approximately 15,564 gallons of a used oil and water mixture contaminated with PCBs at a concentration of approximately 1,193 parts per million (“ppm”).

16. On December 29, 2008, Safety-Kleen notified EPA that it inadvertently received and shipped PCB waste from its Marlborough, Massachusetts facility.

17. On December 30, 2008, EPA requested additional information from Safety-Kleen regarding its shipment of PCB waste from its Marlborough, Massachusetts facility.

18. On January 13, 2009 and January 27, 2009, Respondent provided EPA with responses to its request for information regarding its shipment of PCB waste from its Marlborough, Massachusetts facility.

19. Based on the information submitted by Respondent, Safety-Kleen was a generator of PCB waste that transported PCB waste offsite from its Marlborough, Massachusetts facility, without identifying the mixture as PCB waste, indicating the storage for disposal date for the PCB waste, or listing the weight of the waste in kilograms on the shipment’s manifest, in violation of 40 C.F.R. § 761.207.

**B. Barre, Vermont Facility**

20. On April 29, 2009, Safety-Kleen shipped offsite for recycling from its Barre, Vermont facility about 5,832 gallons of used oil contaminated with a PCB concentration of approximately 8.2 ppm, which included a load of approximately 500 gallons of used oil with a PCB concentration of approximately 741.9 ppm.

21. On May 12, 2009, Safety-Kleen notified EPA that it inadvertently received and shipped PCB waste from its Barre, Vermont facility.

22. On May 18, 2009, EPA requested additional information from Safety-Kleen regarding its shipment of PCB waste from its Barre, Vermont facility.

23. On May 18, 2009, Respondent provided EPA with responses to its request for information regarding its shipment of PCB waste from its Barre, Vermont facility.

24. Based on the information submitted by Respondent, Safety-Kleen was a generator of PCB waste that transported PCB waste offsite from its Barre, Vermont facility without using a manifest, identifying the used oil as PCB waste, indicating the storage for disposal date for the PCB waste, or listing the weight of the waste in kilograms, in violation of 40 C.F.R. § 761.207.

**C. Portland, Connecticut Facility**

25. On May 21, 2009, Safety-Kleen shipped offsite for recycling from its Portland, Connecticut facility about 3,510 gallons of used oil contaminated with a PCB concentration of approximately 77 ppm, which included a load of approximately 150 gallons of used oil with a PCB concentration of approximately 657 ppm.

26. On July 14, 2009, the Connecticut Department of Environmental Protection (“CT DEP”) notified EPA and provided supporting documentation that Safety-Kleen shipped PCB waste from its Portland, Connecticut facility without a manifest.

27. Based on the information submitted by CT DEP, Safety-Kleen was a generator of PCB waste that transported PCB waste offsite from its Portland, Connecticut facility without using a manifest, identifying the used oil as PCB waste, indicating the storage for disposal date for the PCB waste, or listing the weight of the waste in kilograms, in violation of 40 C.F.R. § 761.207.

### **III. TERMS OF SETTLEMENT**

28. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors, and assigns.

29. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in this CAFO, consents to its terms.

30. Respondent hereby waives its right to contest, for purposes of this settlement, any issue of law or fact set forth in this CAFO, as well as its right to appeal the Final Order.

#### **A. PENALTY**

31. Pursuant to Section 16 of TSCA, taking into account the penalty assessment criteria of Section 16(a), the facts set forth in this CAFO, and other circumstances as justice may require, EPA determined that it is fair and appropriate to assess a civil penalty in the amount of eighty thousand dollars (\$80,000) for the violations alleged in this CAFO.

32. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a company, bank, cashier's, or certified check in the amount of \$80,000 payable to the order of the "Treasurer, United States of America," and referencing the EPA Docket Number of this action (TSCA-01-2010-0051). The check should be forwarded to:

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

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

Wanda Santiago  
Regional Hearing Clerk  
United States Environmental Protection Agency  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109

and

Amanda J. Helwig  
Enforcement Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Mail Code: 2243-A  
Washington, DC 20460.

Interest and late charges, if applicable, shall be paid as specified in Paragraph 33 below.

33. Failure by Respondent to pay the total penalty in full by the due date may subject the Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of the Final Order. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid, in accordance with 31 C.F.R. § 901.9(d).

34. The penalty specified in Paragraph 31 above shall represent a civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

**B. COMPLIANCE ACTIONS**

35. Within ninety (90) days of the effective date of this CAFO, Safety-Kleen shall implement at any of its facilities located in Massachusetts, Connecticut, Vermont, Rhode Island, Maine, and/or New Hampshire (“Region 1 facilities”) the operational changes detailed in Attachment A to this CAFO, which encompass requirements for mandatory pre-shipment PCB testing of used oil collected by Safety-Kleen from third party collectors, including, but not limited to, oil collection companies, scrap yards, and municipalities. As described in Attachment A, the operational changes also include requirements for mandatory sampling of oil collection trucks before off-loading at certain Safety-Kleen facilities, as well as mandatory PCB testing of oil collection tanks before shipment of the oil offsite from certain Safety-Kleen facilities.

36. Within 120 days of the effective date of this CAFO, Safety-Kleen shall submit a certification to EPA, declaring that (1) Respondent has fully implemented at its Region 1 facilities the operational changes set forth in Attachment A to this CAFO, and (2) Respondent is operating its Region 1 facilities in compliance with 40 C.F.R. Part 761. Respondent shall forward this certification to:

Marianne Milette  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES05-4  
Boston, MA 02109.



**C. STIPULATED PENALTIES**

37. Provided that Respondent fully implements all of the requirements for Region 1 facilities detailed in Attachment A to this CAFO and referenced above in Section III.B, Respondent shall for 1095 days following the effective date of this CAFO:

a. Notify EPA in writing within fifteen (15) days of the discovery of any violations by Safety-Kleen of the distribution in commerce requirements, set forth in 40 C.F.R. § 761.20(c), at its Region 1 facilities based on Respondent's receipt of PCB waste from a generator's site at a Safety-Kleen facility; include in its notification information regarding the source, amount, and PCB concentration of the waste; and

b. Pay stipulated penalties as follows:

i. \$14,169 for each of Safety-Kleen's violations of 40 C.F.R. § 761.20(c) where EPA determines that the extent of potential damage is "Major" under EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy," April 9, 1990 ("PCB Penalty Policy");

ii. \$9,210 for each of Safety-Kleen's violations of 40 C.F.R. § 761.20(c) where EPA determines that the extent of potential damage is "Significant" under EPA's PCB Penalty Policy;

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

38. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties.

39. Respondent shall make stipulated penalty payments by submitting a company, bank, cashier's, or certified check in the applicable amount, payable to the order of the

“Treasurer, United States of America,” and referencing the EPA Docket Number of this action (TSCA-01-2010-0051). The check should be forwarded to:

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

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

Wanda Santiago  
Regional Hearing Clerk  
United States Environmental Protection Agency  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109

and

Amanda J. Helwig  
Enforcement Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Mail Code: 2243-A  
Washington, DC 20460.

Interest and late charges, if applicable, shall be paid as specified in Paragraph 33 above.

**D. GENERAL PROVISIONS**

40. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16 (a) of TSCA, 15 U.S.C. § 2615(a), for the violations alleged in this CAFO. Except as detailed in Paragraph 37, compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA. It is the responsibility of the Respondent to comply with such laws and regulations, including, but not limited to, the requirements regarding distribution in commerce, set forth at 40

C.F.R. § 761.20; decontamination procedures, set forth at 40 C.F.R. § 761.79; notification of  
In the Matter of Safety-Kleen Systems, Inc.  
Docket No. TSCA-01-2010-0051  
Consent Agreement and Final Order  
Page 10 of 15

PCB waste activity, set forth at 40 C.F.R. § 761.205; manifesting, set forth at C.F.R. § 761.207; and unmanifested waste reporting, set forth at 40 C.F.R. § 761.211. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in the CAFO shall be construed to limit the authority of EPA to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or Respondent's violation of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

41. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

42. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.

43. This CAFO does not constitute a waiver, suspension or modification of the requirements of TSCA, 15 U.S.C. § 2601 *et seq.*, or any regulations promulgated thereunder.

**E. Force Majeure**

44. When circumstances caused by a potential Force Majeure event (as defined in Paragraph 47 below) may delay the performance of the operational changes in Paragraph 35 and Attachment A of this CAFO, including receiving required permits or authorizations from state and local agencies, Respondent shall so notify EPA in writing within 10 days after Respondent's knowledge of such circumstances. The written notice shall include the cause(s) of any actual or

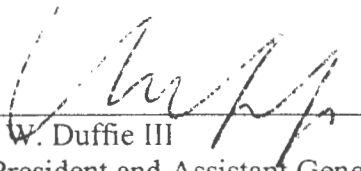
expected delay or noncompliance, the anticipated duration of any delay, the measures taken and to be taken by Respondent to prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures.

45. If EPA agrees that a delay in the performance of an operational change under this CAFO is or was caused by a Force Majeure event, the time for performance of such obligations will be extended for such time as is necessary to complete those obligations. EPA will notify Respondent in writing of the length of the extension. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation under this CAFO.

46. If EPA does not agree that a delay in the performance of an operational change under this CAFO is or was caused by a Force Majeure event, or does not agree with Respondent on the length of the proposed extension of time due to the Force Majeure event, EPA shall notify Respondent in writing of its decision and basis therefore.

47. "Force Majeure," for purposes of this CAFO, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors, which delays the performance of an operational change that Respondent must implement under this CAFO, despite Respondent's best efforts to fulfill the obligation. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, change of ownership of any facilities, or any other financial inability by Respondent to meet an obligation under this CAFO.

FOR RESPONDENT:

  
\_\_\_\_\_  
Virgil W. Duffie III  
Vice President and Assistant General Counsel  
Safety-Kleen Systems, Inc.

9/9/10  
\_\_\_\_\_  
Date

FOR COMPLAINANT:



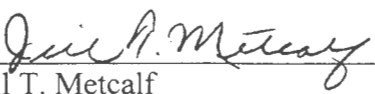
Joanna Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

Sept 17, 2010  
Date

## VI. FINAL ORDER

Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective upon filing with the Regional Hearing Clerk.

Date: Sept. 20, 2010

  
\_\_\_\_\_  
Jill T. Metcalf  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

## Attachment A

### I. Operational Improvements for Polychlorinated Biphenyls (“PCBs”)

#### A. General PCB Operational Improvements

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



## **B. Facility-Specific PCB Operational Improvements**

### 1. Facility Name: Bridgeport, CT

The Bridgeport facility operations shall identify any PCB contamination prior to off-loading. All oil arriving at the Bridgeport facility shall be tested for PCBs in an off-site laboratory prior to off-loading at the facility. PCB verification analysis shall be conducted on all shipments prior to being sold into on-specification used oil fuel markets.

### 2. Facility Name: Portland, CT

The Portland facility operations shall identify any PCB contamination prior to off-loading. All oil arriving at the Portland facility shall be tested for PCBs in an off-site laboratory prior to off-loading at the facility. PCB verification analysis shall be conducted on all shipments prior to being sold into on-specification used oil fuel markets.

### 3. Facility Name: Marlborough, MA

The Marlborough facility does not manage used oil, so the facility does not need to perform PCB testing or verification analysis at this time.

### 4. Facility Name: Salisbury, MA

The Salisbury facility does not manage used oil, so the facility does not need to perform PCB testing or verification analysis at this time.

### 5. Facility Name: West Brookfield, MA

The West Brookfield facility shall implement a rotational management of the railcars as a guard tank system to ensure that the facility tests oil prior to shipment. Under this approach, oil received at the facility shall be accumulated sequentially in railcars. Once a railcar is full, it shall be locked down until PCB analysis is completed. During this time, the remaining rail cars will be used to maintain daily oil operations. Upon analytical verification that a rail car does not contain PCBs, that railcar can be released for off-site shipment.

### 6. Facility Name: Newington, NH

The Newington facility operations shall identify any PCB contamination prior to off-loading. Oil arriving at the Newington facility shall be tested for PCBs in an on-site laboratory. In addition, PCB verification analysis

shall be conducted on all shipments prior to being sent to the refined fuel oil market. **Note:** At Newington, analytical testing requirements for used oil received at the facility may be waived if an oil shipment arrives with a certified analytical data demonstrating the used oil does not contain PCBs.

7. Facility Name: Cranston, RI

The Cranston facility operations shall identify any PCB contamination prior to off-loading. Once the Cranston facility restores full operations on site, it shall test for any PCB contamination prior to off-loading. Until Safety-Kleen restores these operations, all oil arriving at the Cranston facility shall be tested for PCBs in an off-site laboratory prior to off-loading at the facility. PCB verification analysis shall be conducted on all shipments prior to being sold into on-specification used oil fuel markets. **Note:** At Cranston, analytical testing requirements for used oil received at the facility may be waived if an oil shipment arrives with a certified analytical data demonstrating the used oil does not contain PCBs.

8. Facility Name: Barre, VT

The Barre facility shall implement a rotational management of tanks as a guard tank system to ensure that the facility tests oil prior to shipment. To accomplish this, Safety-Kleen shall convert a 15,000 gallon on-site solvent storage tank into a used oil storage tank. Upon completion of this conversion, the facility shall lock down the tank to perform PCB verification analysis on its contents before off-site shipment.