

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX



In the matter of:)
)
)
Safety-Kleen Systems Inc.)
)
Respondent.)
)
)
Los Angeles Branch)
2918 Worthen Ave.)
Los Angeles, CA 90039)
_____)

U.S. EPA Docket No.

RCRA-09-2020-0075 _____

Proceeding under Section 3008(a)
of the Resource Conservation and
Recovery Act, as amended,
42 U.S.C. Section 6928(a)

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, as codified at 40 Code of Federal Regulations (C.F.R.) Part 22 (“Consolidated Rules”).
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondent is the Safety-Kleen System Inc., the owner/operator of the facility located at 2918 Worthen Avenue, Los Angeles, California (“Los Angeles Facility”).
4. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated state regulations adopted pursuant to the approved California hazardous waste management program.
5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interest and in the public interest.

B. STATUTORY AND REGULATORY FRAMEWORK

6. Subtitle C of RCRA requires the EPA Administrator to promulgate regulations establishing a hazardous waste management program. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
7. The State of California (“State”) received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, on August 1, 1992. The authorized hazardous waste program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State has been authorized for all the hazardous waste management regulations referenced in this CA/FO.
8. A violation of California’s authorized hazardous waste program, found at Health & Safety Code § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California’s authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.

C. EPA’S GENERAL ALLEGATIONS

9. Respondent owns and operates the Los Angeles Facility.
10. On February 5 - 6, 2018, EPA conducted compliance evaluation inspections (“CEI”) at the Safety-Kleen facility at 2918 Worthen Avenue, Los Angeles, California (the “Facility”).
11. The Facility is a RCRA-permitted Treatment, Storage and Disposal facility, which functions primarily as a transfer station. Operations at the Facility include receipt and consolidation of wastes including solvent waste, water-based paint, cleaning wastes, universal wastes and e-waste. Respondent’s EPA ID No. is CAT 000 613 935.
12. Respondent operates pursuant to a RCRA permit issued by the Department of Toxic Substances Control on March 17, 2009 (“RCRA Permit”). The permit allows the facility to operate several hazardous waste management units, including a 12,000 gallon underground storage tank and two drum/container storage areas.

In the Matter of Safety-Kleen, Los Angeles Branch
Consent Agreement and Final Order

13. Based upon the findings EPA made during the inspections, and additional information obtained subsequent to the inspections, EPA determined that Respondent violated California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty and/or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
15. The Administrator has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators, with delegation 8-9-A, last revised February 4, 2016. The Regional Administrator, EPA Region IX, in turn, re delegated that authority to the EPA signatory below.
16. Respondent is a “person” as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].¹
17. Respondent is the “owner” of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
18. Respondent is the “operator” of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
19. Respondent is a “generator” of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
20. Respondent is or has been engaged in “treatment,” “storage,” or “disposal” of “hazardous waste” as defined in 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* 40 C.F.R. §§ 260.10 and 261.3].
21. At the Facility, Respondent generates and accumulates, or has generated and accumulated, “hazardous waste” as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include but are not limited to the following hazardous waste codes: D001, D018, D020, D039, F003 and F005.

¹ All citations to the “C.C.R.” refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. As a convenience, corresponding Federal citations are provided in brackets.

D. ALLEGED VIOLATIONS

COUNT I

Failure to Make an Accurate Hazardous Waste Determination

22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were set forth here in their entirety.
23. 22 C.C.R. § 66262.11 requires that a person who generates a solid waste must determine whether that waste is hazardous. (*See also* 40 C.F.R. § 262.11).²
24. As part of its operations, Respondent provides its customers with parts washing solutions for use in degreasing units. Respondent collects the solvent when it is spent and consolidates the waste at the Facility's underground storage tanks.
25. At the time of EPA's inspection, Respondent managed spent Aqueous Parts Wash (APW) and Aqueous Immersion Cleaner (AIC) that it collected and managed at the Los Angeles Facility as non-RCRA, California-only hazardous waste.
26. After EPA's inspection, the EPA Inspector reviewed analytical data for various waste streams handled at the Facility between 2014 – 2017.
27. The review determined that on at least one occasion in 2015 the consolidated AIC tank exhibited the RCRA toxicity characteristic for benzene (D018) and ignitability (D001).
28. The review determined that on at least one occasion in 2017 the consolidated APW tank exhibited the RCRA toxicity characteristic for tetrachloroethylene (D039).
29. The review determined that on at least one occasion in 2017 sludge generated in the consolidated APW tank was RCRA hazardous for tetrachloroethylene (D039).
30. Safety-Kleen's records indicate that it did not manage the above wastes as RCRA hazardous.
31. Therefore, EPA alleges that Respondent failed to accurately determine if solid waste it generated was hazardous, in violation of 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

² The current version of 40 C.F.R. § 262.11 clarifies EPA's longstanding policy that generators must make an accurate waste determination.

E. CIVIL PENALTY

32. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay ONE HUNDRED TWO THOUSAND AND SEVEN HUNDRED DOLLARS (\$102,700) as the civil penalty for the violations alleged herein.
33. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including the following: the seriousness of the violation and any good faith efforts to comply with applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's "June 2003 RCRA Civil Penalty Policy," and adjusted for inflation in accordance with the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

F. ADMISSIONS AND WAIVERS OF RIGHTS

34. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in this CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section E of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CA/FO; and (v) waives the right to appeal the proposed final order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

35. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until the civil penalty required under Section E has been paid in accordance with Section I and six months following the submittal of the final report required in Paragraph 38.g. When those matters are concluded, this CA/FO shall terminate and constitute full settlement of civil penalty liability for the violations alleged herein.
36. No change in ownership relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
37. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute it and to legally bind Respondent to it.

H. CONDITIONS OF SETTLEMENT

38. As a condition of settlement, Respondent consents to and agrees to perform the following tasks in accordance with the timeframes indicated below:

- a. Within one-hundred and eighty (180) days of the Effective Date, Respondent shall implement procedures to ensure that all tanks or containers of consolidated waste APW, Immersion Cleaner (IC) or Aqueous Brake Cleaner (ABC) at its facilities are sampled and analyzed at a laboratory for VOCs, metals, and General Chemistry (flashpoint, pH, specific gravity) prior to disposal (“Guard Tank Program”). Respondent must use the resulting analytical data when determining whether the tank or container contents are hazardous waste and dispose of the waste accordingly.

During the term of this CA/FO, Respondent shall sample every tank or container in the Guard Tank Program for four (4) months following initial implementation. Thereafter, Respondent may reduce sampling and analysis to every other tank at each facility where there have been no failures.³

During the term of this CA/FO, once each facility has conducted one (1) year of analysis with no RCRA failures, the sampling may be reduced to every 5th tank. If a failure occurs when Respondent is sampling every 5th tank at a facility, Respondent will resume sampling every other tank at that facility until it has conducted another six (6) months without a RCRA failure. At that point the facility may return to sampling every 5th tank.

- b. Within thirty (30) days of the Effective Date, Respondent shall inform its customers that it will no longer use the Annual Recharacterization program EPA reviewed as a result of the CEI to determine whether spent APW, IC or ABC are hazardous, and send a copy of the communication to the EPA Inspector (see Paragraph 41).
- c. Within sixty (60) days of the Effective Date, Respondent shall submit for EPA review and approval a workplan for a program for field screening (Field Screening Program) using gas detection tubes for tetrachloroethylene “PCE” at each APW, IC or ABC customer location, to determine if the customer’s spent APW, IC, or ABC contain regulated levels of PCE. The program shall require

³ A “failure” is indicated if the results of the analytical data indicate the waste contains any of the metal or volatile contaminants listed in Table 1 of 40 C.F.R. § 261.24 at the concentration equal to or greater than the respective value in the table, or if the flash point or pH indicate the waste exhibits the characteristics in 40 C.F.R. §§ 261.21 and 261.22.

sampling one hundred (100) percent of customer containers that are profiled by the customer or Safety-Kleen as non-hazardous.

- d. The Field Screening Program workplan shall include Respondent's Standard Operating Procedures for performing the field sampling with gas detection tubes.
- e. Respondent shall implement the Field Screening Program at all Region 9 sites within one-hundred and eighty (180) days of EPA approval.
- f. Within ninety (90) days of the Effective Date, Respondent shall develop and transmit to its customers materials to educate its customers regarding the harms associated with mixing hazardous constituents and waste with the aqueous waste streams, and a description of the Field Screening Program that will be implemented. Respondent shall transmit a copy of the materials to the EPA Inspector (see Paragraph 41).
- g. For three (3) years following the Effective Date, Respondent shall submit annual reports summarizing the results of the Guard Tank Program implemented in Region 9 indicating rates of failure and steps taken to address trends to the EPA Inspector (see Paragraph 41).

I. PAYMENT OF CIVIL PENALTY

39. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE HUNDRED TWO THOUSAND AND SEVEN HUNDRED DOLLARS (\$102,700) in full settlement of the federal civil penalty claims set forth in this CA/FO.
40. Respondent shall submit payment of ONE HUNDRED TWO THOUSAND AND SEVEN HUNDRED DOLLARS within thirty (30) calendar days of the Effective Date of this CA/FO, in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, the Respondent's name and address, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:

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

Overnight Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:
U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency
*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

On Line Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

41. At the time payment is made, Respondent shall send a PDF copy of the notification that the payment has been made by one of the methods listed above including proof of the date payment was made, to the following email addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 9
R9HearingClerk@epa.gov

And to:

Sharon Lin
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
Lin.Sharon@epa.gov

42. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. In addition, a 6% per annum penalty assessed monthly will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.
43. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

J. DELAY IN PERFORMANCE/STIPULATED PENALTIES

44. In the event Respondent fails to (a) submit a payment to EPA by the time required in this CA/FO, or (b) complete Conditions of Settlement required by Section H above, Respondent shall pay stipulated penalties up to: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay; ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay; and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

45. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
46. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt by Respondent of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
47. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 40.
48. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
49. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

K. CERTIFICATION OF COMPLIANCE

50. In executing this CA/FO, Respondent certifies under penalty of law to EPA that it has fully complied with Section 3008 of RCRA, 42 U.S.C. § 6928, and its implementing regulations that formed the basis for the violations alleged in Section D, above.
51. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

L. RESERVATION OF RIGHTS

52. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008 of RCRA, 42 U.S.C. § 6928. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, or any other statutory, regulatory or common law enforcement authority of the United States. Nothing herein shall be construed to limit the power of the 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.

53. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
54. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the alleged violations and facts as set forth in Section D of this CA/FO.
55. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any required local, State or federal permits.

M. OTHER CLAIMS

56. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

N. MISCELLANEOUS

57. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
58. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
59. Each party to this action shall bear its own costs and attorneys' fees.
60. EPA and Respondent consent to entry of this CA/FO without further notice.
61. If Respondent is unable to complete any of the Conditions of Settlement required in Section H, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request within seven (7) days of identifying a need for a modification. Based on this request, EPA shall in its discretion grant or deny, in full or in part, the request for modification.

In the Matter of Safety-Kleen, Los Angeles Branch
Consent Agreement and Final Order

O. EFFECTIVE DATE

62. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

FOR RESPONDENT SAFETY-KLEEN:



Eric Gerstenberg, Director

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

AMY MILLER- Digitally signed by AMY
BOWEN MILLER-BOWEN
Date: 2020.09.29
16:25:13 -07'00'

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

In the Matter of Safety-Kleen, Los Angeles Branch
Consent Agreement and Final Order

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-09-2020-0075) be entered and that Respondent shall pay a civil penalty of ONE HUNDRED TWO THOUSAND AND SEVEN HUNDRED DOLLARS (\$102,700), and complete the Conditions of Settlement in Section H, in accordance with the terms of this CA/FO.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

Steven L. Jawgiel

Digitally signed by Steven L.
Jawgiel

Date: 2020.09.30 10:45:32 -07'00'

Date

Steven L. Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

This is to certify that the fully executed Consent Agreement and Final Order in the matter of **Safety-Kleen Systems Inc. (Docket #: RCRA-09-2020-0075)** was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties:

FOR RESPONDENT: Timmery Fitzpatrick
Assistant General Counsel
Clean Harbors
P.O Box 9149
42 Longwater Drive
Norwell, MA 02061
Fitzpatrick.timmery@cleanharbors.com

FOR COMPLAINANT: Rebecca Sugerman
Assistant Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Sugerman.rebecca@epa.gov

Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX

Date