

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II

2010 OCT 28 P 3: 21

REGIONAL HEARING  
CENTER

CONSENT AGREEMENT

AND

FINAL ORDER

Docket No. TSCA-02-2011-9210

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In the Matter of :

Safety-Kleen Systems, Inc., :

Respondent. :

Proceeding under Section 16(a) of  
the Toxic Substances Control Act. :

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). 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 (July 1, 2000) (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), alleges that Respondent Safety-Kleen Systems, Inc. ("Safety-Kleen") violated Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 761, relating to polychlorinated biphenyls ("PCBs") and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

EPA and Safety-Kleen agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation.

This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent is Safety-Kleen Systems, Inc.
2. Respondent is a corporation incorporated under the laws of Wisconsin, with its principal place of business in Plano, Texas.
3. Respondent owns, operates, and/or controls the facility in and around 601 Riley Road, East Chicago, Indiana (hereinafter "Respondent's East Chicago facility").
4. Respondent owns, operates, and/or controls the facility in and around 60 Katherine Street, Buffalo, New York (hereinafter "Respondent's Buffalo facility").
5. Respondent owns, operates, and/or controls the facility in and around 310 Vip Parkway, Syracuse, New York (hereinafter "Respondent's Syracuse facility").
6. Respondent owns, operates, and/or controls the facility in and around 41 North Gates Avenue, Lackawanna, New York (hereinafter "Respondent's Lackawanna facility").
7. Respondent owns, operates, and/or controls the facility in and around 50 Snake Hill Road, West Nyack, New York (hereinafter "Respondent's West Nyack facility").
8. On or about November 26 (date obscured on original receipt) 2006, Respondent's West Nyack facility acquired approximately 300 gallons of used oil from H.A. Schreck Inc. that was determined to be contaminated with PCBs over 50 parts per million (hereinafter "ppm"). This used oil was shipped to Respondent's East Chicago, Indiana facility without being identified as PCB waste on a hazardous waste manifest.
9. On or about both April 20, 2007 and April 23, 2007, Respondent's Syracuse facility acquired approximately 3600 gallons of used oil and water Op-Tech Environmental Services, Inc. that was determined to be contaminated with PCBs over 50 ppm. This oil was shipped to Respondent's Buffalo facility without being identified as PCB waste on a hazardous waste manifest.

10. On or about August 24, 2007, Respondent's Lackawanna facility acquired approximately 50 gallons of used oil from Orchard Park Collision that was determined to be contaminated with PCBs over 50 ppm. This used oil was shipped to Respondent's Buffalo facility without being identified as PCB waste on a hazardous waste manifest.

11. On or about February 12, 2009, Respondent's Lackawanna facility acquired approximately 50 gallons of used oil from Advance Auto Parts Incorporated that was determined to be contaminated with PCBs over 50 ppm. This used oil was shipped to Respondent's Buffalo facility without being identified as PCB waste on a hazardous waste manifest.

12. Respondent, on the occasions described in paragraphs 8 through 11, above, distributed PCBs in commerce without obtaining an exemption issued under 40 C.F.R. § 761.80 in accordance with the specifications and requirements of 40 C.F.R. § 761.20(c),

13. Respondent, on the occasions described in paragraphs 8 through 11, above, failed to identify PCB waste submitted for off-site disposal on EPA Manifest 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).

14. On February 4, 2010, Complainant sent to Respondent a "Notice of Opportunity Related to Enforcement Action Under The Toxic Substances Control Act", which alleged that Respondent committed violations of the PCB regulations at 40 C.F.R. Part 761.

15. On April 19, 2010, the parties met for an informal settlement conference.

#### CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facilities which are the subject of the above referenced Complaint, is subject to the regulations and requirements pertaining to PCBs and PCB Items promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761.

2. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.

3. Processing or distribution in commerce of any PCBs or any PCB Items, regardless of the concentration, without an exemption issued under 40 C.F.R. § 761.80 is a violation of 40 C.F.R. § 761.20(c), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 2614(1)(C).

4. Failure to identify PCB waste submitted for off-site disposal on EPA Manifest form 8700-22 is a violation of 40 C.F.R. § 761.207(a), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e) and 2614(1)(C).

#### TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. § 22.18 (64 Federal Register 40138, 40182-83 [July 23, 1999]) (hereinafter "Consolidated Rules"), it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.
2. For the purposes of this Consent Agreement, Respondent (a) admits the jurisdictional allegations of the Complaint, and (b) neither admits nor denies the specific factual allegations contained in the Complaint.
3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **ONE HUNDRED THIRTY THOUSAND DOLLARS (\$130,000)**, payable to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such checks shall be mailed to:

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

Alternatively, payment may be by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045

- 3) Account: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"
- 6) Name of Respondent
- 7) Docket Number

Promptly after payment has been made, Respondent shall send a copy of such payment or furnish reasonable proof that such payment has been made to both:

Ann M. Finnegan, Life Scientist  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-105  
Edison, New Jersey 08837

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "Due Date").

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if any payment is not received on or before the Due Date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the Due Date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the Due Date.

4. In addition to payment of the penalty described in paragraph 3, above, Respondent agrees that, within ninety (90) days of the effective date of this CAFO, Safety-Kleen shall implement at its facilities in New York and New Jersey ("Region 2 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 certain third party collectors, including, but not limited to, used oil collection companies, scrap yards, and municipalities. As described in Attachment A, the operational changes also include requirements for mandatory PCB testing of oil collection trucks before offloading 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.

5. 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 2 facilities the operational changes set forth in Attachment A to this CAFO, and (2) Respondent is operating its Region 2 facilities in compliance with 40 C.F.R. Part 761. Respondent shall forward this certification to:

Ann M. Finnegan, Life Scientist  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-105  
Edison, New Jersey 08837

6. Provided that Respondent fully implements all of the requirements for Region 2 facilities detailed in Attachment A to this CAFO and referenced above, Respondent shall, for 1,095 days following the effective date of this CAFO:

(a) Notify EPA in writing within fifteen (15) days of 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 2 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");

(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.

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

8. Respondent shall make stipulated penalty payments by submitting a 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-02-2011-9210). Each check shall be forwarded to the address shown in paragraph 3, above. Promptly after each payment has been made, Respondent shall send copies of these payments or furnish reasonable proof that such payments have been made to both:

Ann M. Finnegan, Life Scientist  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-105  
Edison, New Jersey 08837

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

Interest and late charges, if applicable, shall be paid as specified in paragraph 3, above.

9. (a) If any event occurs which causes or may cause delays in the completion of the operational changes as required under paragraph 4, above, and/or Attachment A of this Consent Agreement, Respondent shall notify EPA in writing or by electronic mail within 10 days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a

waiver of Respondent's right to request an extension of its obligation under this Agreement based on such incident.

(b) If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

(c) In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the operational changes outlined in Attachment A of this Agreement shall not be excused, and enforcement action may result.

(d) The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

10. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder 40 C.F.R. Part 761, that attach or might have attached as a result of the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

11. 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 described in paragraph 6, above, 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 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. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all other applicable federal, state, or local laws, rules, or regulations.

12. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

13. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

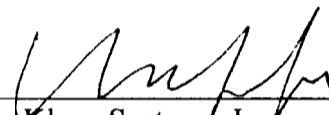
14. Respondent waives any right it may have pursuant to 40 C.F.R. 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

15. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

16. Each party shall bear its own costs and attorneys fees in this matter.

17. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

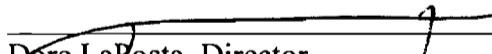
BY:   
Safety-Kleen Systems, Inc.

NAME: Virgil W. Duffie III  
(PLEASE PRINT)

TITLE: ASSISTANT SECRETARY

DATE: 10/08/10

COMPLAINANT:

  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway  
New York, New York 10007

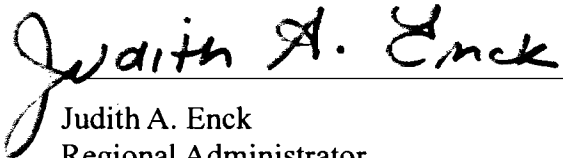
DATE: OCTOBER 25, 2010

In the Matter of Safety-Kleen Systems, Inc.  
Docket Number TSCA-02-2011-9210

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Safety-Kleen Systems, Inc., bearing Docket Number TSCA-02-2011-9210. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered into pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605 for purposes of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

DATE: OCT. 26, 2010

  
\_\_\_\_\_  
Judith A. Enck

Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, New York 10007

**In the Matter of Safety-Kleen Systems, Inc.  
TSCA-02-2011-9210**

**Consent Agreement - 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 EPA Region 2 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 2 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: Vincentown, NJ**

The Vincentown facility will implement a rotational management of tanks (as a guard tank system) to ensure that oil is tested prior to being shipped offsite. After each tank is filled, it is locked out, and a sample is shipped to the Safety-Kleen Linden, NJ facility for PCB analysis. Once Safety-Kleen verifies that the tank does not contain PCBs, the tank is released for shipment.

**2. Facility Name: South Plainfield, NJ**

The South Plainfield facility does not manage used oil.

**3. Facility Name: Linden, NJ**

The Linden facility operations identify PCB contaminants prior to off-loading. Oil arriving at the Linden facility is tested for PCBs in an on-site laboratory. In addition, PCB verification analysis is conducted on all shipments prior to being sent to the on specification fuels market. **Note:** At Linden, analytical testing for used oil, prior to off-loading, may be waived if an oil shipment arrives with a certified analytical data demonstrating the used oil does not contain PCBs.

**4. Facility Name: Avon, NY**

The Avon facility will implement a rotational management of tanks (as a guard tank system) to ensure that oil can be tested prior to being shipped offsite. To accomplish this, Safety-Kleen will convert a 15,000 gallon on-site tank (in addition to the existing oil tank). Once this change is made, the facility will have the capability to lock down one tank while PCB analysis is conducted on that tank. The oil tank will need to be permitted by the state of New York.

**5. Facility Name: Cohoes, NY**

The Cohoes facility will implement a rotational management of tanks (as a guard tank system) to ensure that oil can be tested prior to being shipped offsite. To accomplish this, Safety-Kleen will convert a 20,000 gallon on-site tank and install a new 12,000 tank. Once this change is made, the facility will have the capability to lock down one tank while PCB analysis is conducted on that tank. The oil tanks will need to be permitted by the state of New York.

**6. Facility Name: Lackawanna, NY**

The Lackawanna facility delivers its oil collections directly to the Safety-Kleen Buffalo operation where it is tested upon receipt. No used oil is managed on-site.