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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**BEFORE THE ADMINISTRATOR**

<p>In the matter of ) ) Safety-Kleen Systems, Inc., ) <b>98-010</b> ) Dolton Recycle Center ) ) Respondent )</p>	<p>Docket No. RCRA-5-</p>
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ORDER GRANTING RESPONDENT'S  
MOTION FOR DISCOVERY

Safety-Kleen Systems, Inc. ("Safety-Kleen"), has filed a motion seeking to depose Michael Mikulka, Ted Dragovich, and Mark Schollenberger. Mr. Mikulka is a Senior Environmental Engineer with Region 5 of the U.S. Environmental Protection Agency ("EPA"). Mr. Dragovich is a Section Manager, Hazardous Waste Branch, with the Illinois Environmental Protection Agency ("IEPA"). Mr. Schollenberger is a Permit Engineer, also with the IEPA. Safety-Kleen makes this discovery request pursuant to Rule 19(e)(3) of the Consolidated Rules of Practice. 40 C.F.R. 22.19(e)(3). EPA has not filed a response to Safety-Kleen's motion. <sup>(1)</sup>

The standard for ruling upon a request for depositions is contained in Rules 19(e)(1) and 19(e)(3). 40 C.F.R. 22.19(e)(1) & 22.19(e)(3). In that regard, Rule 19(e)(1) sets forth three requirements. First, that the "other discovery" may not unreasonably delay the proceeding, or place an unreasonable burden upon the non-moving party. Second, that the information sought is most reasonably obtained from the non-moving party, and the non-moving party has refused to voluntarily provide the information. Third, that the information sought has significant probative value on a disputed issue of material fact. Rule 19(e)(3) requires the additional finding that when a party requests depositions upon oral questions, "[t]he information sought cannot reasonably be obtained by alternative methods of discovery."

Safety-Kleen has satisfied the discovery requirements of Rules 19(e)(1) and (e)(3). For example, respondent has shown that Mikulka, Dragovich, and Schollenberger are likely to have personal knowledge regarding the circumstances surrounding the issuance and enforcement of its Dolton Recycle Center permit, including matters related to any Compliance Commitment Agreement entered between respondent and the IEPA. Such information, in turn, clearly would be relevant to the "overfiling" and "fair notice" defenses raised by Safety-Kleen. In short, the information sought by respondent has significant probative value with respect to disputed issues of material fact and this information is obtainable only by way of depositions. [\(2\)](#)

Accordingly, Safety-Kleen's motion for discovery is granted. The depositions of Mr. Dragovich and Mr. Schollenberger are to be conducted in Springfield, Illinois, and each deposition shall not exceed three hours. Unless the parties otherwise agree, the deposition of Mr. Mikulka shall be held in Chicago, Illinois, and it also shall not exceed three hours.

The parties shall jointly inform the court, no later than November 15, 1999, as to the discovery status of this case. In the event that the IEPA continues to refuse to make its employees available for deposition, Safety-Kleen may make a formal request for subpoenas no later than November 19, 1999. In such event, this court has the authority pursuant to Section 3008(b) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(b), to issue subpoenas ordering the attendance at deposition of Mr. Dragovich and Mr. Schollenberger. [\(3\)](#)

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Carl C. Charneski  
Administrative Law Judge

Issued: October 21, 1999  
Washington, D.C.

1. Correspondence between Safety-Kleen and EPA would seem to indicate that EPA has no objection to the company's conducting the depositions. Indeed, but for the IEPA's unwillingness to make its employees, Dragovich and Schollenberger, available for questioning, the deposition process would have been completed.
2. This order expresses no view as to respondent's likelihood of success with respect to its affirmative defenses.
3. This order only establishes Safety-Kleen's right to depose the named individuals. It does not affect whatever privileges and objections that otherwise might be raised at deposition.



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