

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF: §
§
SAFETY KLEEN § DOCKET NO. RCRA-06-2012-0948
SYSTEMS, INC. §
§
ID NO. TX0000095695 §
§
RESPONDENT §

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6, and Safety Kleen Systems, Inc. (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928 is concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. Notice was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding only, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations and facts which are alleged herein.

6. The Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

7. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

8. The Respondent agrees that the provisions of this CAFO shall be binding on the Respondent, and its officers, directors, employees, successors, and assigns.

9. The headings in this CAFO are for convenience of reference only and shall not affect the interpretation of this CAFO.

II. STATUTORY AND REGULATORY BACKGROUND

10. The Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*, was enacted on October 21, 1976, and establishes a comprehensive program to be administered by the Administrator of EPA (Administrator), regulating the generation, transportation, treatment, storage, and disposal of hazardous waste.

11. Pursuant to its authority under RCRA, EPA promulgated regulations at 40 C.F.R. Parts 260 through 272 that are applicable to generators, transporters, and treatment, storage, and disposal facilities. These regulations provide detailed requirements governing the activities of persons who generate hazardous waste. These regulations generally prohibit the treatment,

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storage, and disposal of hazardous waste without a permit or equivalent "interim status".

These regulations also prohibit land disposal of certain hazardous waste.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, the Administrator may authorize a state to administer a RCRA hazardous waste program in lieu of the federal program when he or she deems the state program to be substantially equivalent to the federal program. When a state obtains such authorization, federally-approved state regulations apply in lieu of the federal RCRA regulations in that state. Federally-approved state RCRA regulations are enforceable by the United States pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

13. The Administrator granted final authorization to Texas to administer its Hazardous Waste Management Program in lieu of the federal program on December 12, 1984, effective December 26, 1984 (49 Fed. Reg. 48300; *see also* 40 C.F.R. § 272.2201), and there have been subsequent authorized revisions to the federal program.

14. In Texas, the federal hazardous waste program is managed by the Texas Commission on Environmental Quality (TCEQ), pursuant to the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Chapter 361, and the rules and regulations promulgated thereunder.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. Respondent is a corporation incorporated under the laws of the Wisconsin.

16. Respondent began doing business in Texas on or around August 16, 1969.

17. Respondent is a "person" as that term is defined in Texas Administrative Code ("TAC") at § 335.1, Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

18. Respondent's registered agent for service is CT Corporation System, 359 N. St Paul St., Ste. 2900, Dallas, Texas 75201.

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19. Respondent owns and operates an environmental services company with a location at 1580 Industrial Road, Missouri City, Texas.

20. The place of business described in paragraph 19 is a "Facility" as that term is defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

21. Respondent is the "owner" and "operator" of the Facility as those terms are defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

22. Pursuant to RCRA § 3010(a), 42 U.S.C. § 6930(a), Respondent notified EPA and TCEQ that it is a large quantity generator and transporter of hazardous waste.

23. Respondent identified that it generates greater than 1,000 kg/month (2,200 lbs/month) of:

- i. solid waste which exceeds RCRA characteristic waste toxicity levels for the following: D001, D004, D005, D006, D007, D008, D009, D010, D011, D018, D019, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, and D043; and
- ii. the following listed hazardous waste: F002, F003, and F005.

24. The material identified in paragraph 23 above is a "solid waste" as that term is defined at 30 TAC § 335.1, 40 C.F.R. § 261.2, Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

25. "Hazardous Waste" is defined at 30 TAC § 335.1 to mean "any solid waste identified or listed as a hazardous waste by the Administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended".

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26. The material identified in paragraph 23 above is a “hazardous waste” as defined in 30 TAC § 335.1 [40 C.F.R. § 261.3].

27. Respondent is a “generator” of hazardous waste as that term is defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

28. Respondent is a “transporter” of hazardous waste as that term is defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

29. Respondent is a “transfer facility” of hazardous waste as that term is defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

IV. ALLEGED VIOLATIONS

30. Paragraphs 1 – 29 of this Consent Agreement and Final Order are hereby incorporated by reference.

31. Pursuant to 30 TAC § 335.62 [40 C.F.R. § 262.11], a person who generates a solid waste must determine if that waste is hazardous.

32. As described on Uniform Hazardous Waste Manifest 002196400SKS, Respondent shipped “oily waste water (not U.S. DOT or U.S. EPA Regulated)” on November 17, 2009 to U.S. Oil Recovery, L.P., 400 Richey Street, Pasadena, Texas 77506.

33. On or around November 16 - 20, November 30 – December 2, and December 14, 2009, EPA conducted a Compliance Evaluation Inspection (Inspection) at U.S. Oil Recovery.

34. EPA’s analytical results of the “oily waste water” on Uniform Hazardous Waste Manifest number 002196400SKS, on November 17, 2009, showed the hazardous waste characteristic for ignitability (D001).

35. The material identified in paragraph 32 above is a “solid waste” as that term is

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defined at 30 TAC § 335.1, 40 C.F.R. § 261.2, Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

36. Because the material identified in paragraph 32 showed the hazardous characteristic for ignitability, it is a “hazardous waste” as defined in 30 TAC § 335.1 [40 C.F.R. § 261.3].

37. Respondent failed to make a hazardous waste determination for the material shipped on Uniform Hazardous Waste Manifest 002196400SKS.

38. Therefore, based on the above, Respondent violated 30 TAC § 335.62 [40 C.F.R. § 262.11], by failing to make a hazardous waste determination.

V. COMPLIANCE ORDER

39. Pursuant to 42 U.S.C. § 6928, Respondent is hereby ORDERED to take the following actions and provide evidence of compliance within the time period specified below:

- a. Within 30 days of the effective date of the CAFO, provide to EPA a copy of the facility’s waste analysis plan.
- b. Within 60 days of the effective date of this CAFO, provide certification to EPA that the facility has developed and implemented standard operating procedures to ensure hazardous waste manifests comply with 40 C.F.R. Part 262 and that hazardous waste is sent only to facilities permitted to receive that waste.
- c. Within 90 days of the effective date of this CAFO, provide certification to EPA that facility personnel who prepare manifests and arrange for the transport of hazardous waste have been trained how to do so in compliance with state and federal regulations.

40. In all instances in which this CAFO requires written submissions to EPA, each submission must be accompanied by the following certification signed by a “responsible official”:

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I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

For the purpose of this certification, a "responsible official" of a Respondent means a person with the authority to bind Respondent as to the truth, accuracy, and completeness of all certified information.

41. All documents required under this CAFO shall be sent to the following persons:

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA Region 6, Suite 1200
1445 Ross Ave.
Dallas, TX 75202-2733
Attention: Eva Steele

VI. TERMS OF SETTLEMENT

A. CIVIL PENALTY

42. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **\$12,500 (Twelve Thousand Five Hundred Thirty Dollars)**.

43. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. The Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the checks should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the checks should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental
Protection Agency"

PLEASE NOTE: Docket number RCRA-06-2012-0948 shall be clearly typed on the checks, or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket numbers of this CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket numbers of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the checks, transmittal letters, or wire transfer instructions to the following:

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Chief
Compliance Enforcement Section (6EN-HE)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

44. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

45. If the Respondent fails to submit payment within thirty (30) days of the effective date of this Order, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

46. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's

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administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

47. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid.

In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R.

§ 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. NOTIFICATION

48. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA:

Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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Respondent:

Timmery Donahue
Attorney
Safety Kleen Systems, Inc.
42 Longwater Drive
Norwell, MA 02061

C. RETENTION OF ENFORCEMENT RIGHTS

49. The EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

50. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of RCRA.

51. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous waste, pollutants, contaminants, or hazardous substances on, at or from the Respondent's facility, including but not limited to, issuing orders under CERCLA, Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), and Section 7003 of RCRA, 42 U.S.C. § 6973. EPA and the United States also reserve the right to bring an action against the Respondent under CERCLA and any other applicable law for the performance of response actions and/or the recovery of response costs incurred by EPA in connection with any activities conducted at the Facility in response to the release of hazardous substances, including but not limited to, costs of performing corrective action, indirect costs, oversight costs, and past costs, that have not been reimbursed by the Respondent or any other potentially responsible party. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or

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departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

D. COSTS

52. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

E. MODIFICATION

53. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

F. TERMINATION

54. At such time as the Respondent has complied with all requirements of this CAFO, it may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

G. EFFECTIVE DATE

55. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

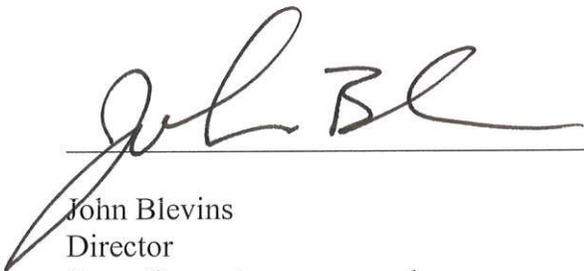
Date: _____



Virgil W. Duffie III
Senior Vice President and Assistant Secretary
Safety Kleen Systems, Inc.
2600 North Central Expressway
Richardson, TX 75080

FOR THE COMPLAINANT:

Date: 8.20.13



John Blevins
Director
Compliance Assurance and
Enforcement Division
U.S. EPA - Region 6

VII. FINAL ORDER

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928 and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those violations and facts alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, directors, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

8/28/13



Patrick Rankin
Regional Judicial Officer

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CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of August, 2013, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) were hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

C T Corporation System
3500 North St. Paul Street, Suite 2900
Dallas, Texas 75201-4234
Registered Agent for Safety Kleen Systems, Inc.

Date: 8/28/2013

Sari Jackson
U.S. EPA Region 6
Dallas, Texas