UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED
MAR 28 2017
EPA ORC
Office of Regional Hearing Clerk

In the Matter of:	)	
Safety-Kleen Systems, Inc. 167 Mill Street Cranston, Rhode Island 02905	)	Docket No. RCRA-01-2017-0007
Proceeding under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)	)	CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. The U.S. Environmental Protection Agency ("EPA"), Region 1, has alleged that Safety-Kleen Systems, Inc. ("Safety-Kleen" or "Respondent") has violated Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), Sections 3002 and 3004, 42 U.S.C. §§ 6922 and 6924, and certain federal and state hazardous waste regulations promulgated pursuant to RCRA. EPA Region I ("Complainant") and Safety-Kleen (together, the "Parties") have agreed to settle this matter through this administrative Consent Agreement and Final Order ("CAFO"). EPA's regulations governing RCRA administrative penalty actions and settlements are set out in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, this CAFO simultaneously commences and concludes this proceeding.

2. EPA Region 1 has brought this federal enforcement action under RCRA, 42 U.S.C. §§ 6901-6987, to obtain civil penalties and compliance. Specifically, Complainant sought civil penalties pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for Respondent's violations of regulations promulgated and authorized pursuant to RCRA. Complainant also sought compliance pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to ensure that Respondent complies with RCRA and its implementing regulations.

3. EPA Region 1 has given notice of this RCRA enforcement action to the State of Rhode Island pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. The Parties have agreed that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving the matter.

II. BACKGROUND FACTS

3. Since 2007, Safety-Kleen has owned and operated a facility located at 167 Mill Street in Cranston, Rhode Island ("Cranston Facility" or "Facility"), that receives, stores, treats and disposes of various hazardous and non-hazardous wastes.

4. The Cranston Facility began operating in the mid-1970s under the name Chem-Pak. In 2003, United Oil Recovery Inc. ("United Oil") purchased the Facility. In 2007, United Oil sold the Facility to Safety-Kleen.

5. On December 28, 2012, Clean Harbors, Inc., a publicly-traded Massachusetts corporation, completed a transaction whereby Safety-Kleen, Inc. and its subsidiaries, including Safety-Kleen Systems, Inc., were acquired by Clean Harbors, Inc. Since that date, Safety-Kleen,

Inc., and its subsidiaries, including Safety-Kleen Systems, Inc., have been wholly-owned subsidiaries of Clean Harbors, Inc.

6. The Cranston Facility began treating and storing hazardous waste in 1978, applied for a hazardous waste treatment, storage and disposal facility ("TSDF") permit from the Rhode Island Department of Environmental Management ("RI DEM") in 1984, and was issued its first TSDF permit in 1986. The Cranston Facility's latest TSDF permit was issued by RI DEM to Safety-Kleen on July 30, 2012 ("2012 TSDF Permit"), and was effective as of January 1, 2011 for a period of five years. Safety-Kleen applied for a new TSDF permit for the Cranston Facility via a permit renewal application dated June 2015. Accordingly, the terms and conditions of the 2012 TSDF Permit continue to apply to Safety-Kleen until the effective date of RI DEM's issuance or denial of a new TSDF permit for the Facility. See 40 C.F. R. § 270.51(d) and Rule 7.B.76 of RI DEM's Rules and Regulations for Hazardous Waste Management ("RI HW Rules").

7. On May 13-15, 2013, EPA Region 1 conducted a RCRA compliance inspection ("EPA's RCRA Inspection") at the Cranston Facility.

8. On May 23, 2014, EPA Region 1 issued an Early Warning Notice to Clean Harbors Environmental Services, Inc. ("Clean Harbors Environmental"), regarding potential RCRA violations identified at the Cranston Facility during EPA's RCRA Inspection.

9. On June 6, 2014, EPA Region 1 issued an Information Request to Safety-Kleen and to Clean Harbors Environmental for information regarding the Cranston Facility's compliance with RCRA, the Clean Air Act ("CAA"), and these statutes' implementing regulations.

10. Clean Harbors Environmental submitted responses to the Information Request in August and September 2014.

11. Safety-Kleen and Clean Harbors Environmental have provided additional compliance information about the Cranston Facility in response to a second CAA and RCRA Information Request and other EPA Region 1 inquiries.

III. ALLEGED RCRA VIOLATIONS

A. RCRA Statutory and Legal Framework

12. Pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 271, that set forth standards and requirements applicable to generators of hazardous waste and to owners and operators of facilities that treat, store or dispose of hazardous waste.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when EPA deems the state program to be substantially equivalent to the federal program.

14. On January 30, 1986, EPA granted Rhode Island final authorization to administer its base hazardous waste program. See 51 Fed. Reg. 3780 (January 30, 1986). At various later times, EPA has authorized Rhode Island to administer additional hazardous waste regulations.

15. RI DEM administers the Rhode Island hazardous waste program through regulations found at Rules 1.0 through 16.0 of the RI HW Rules. The RI HW Rules contain various EPA-authorized hazardous waste regulations, together with certain non-federally-authorized regulations.

16. In 1984, Congress enacted various RCRA amendments, including a new Section 3004(n) of RCRA, 42 U.S.C. § 6921(n), that required EPA to promulgate air emission control regulations for TSDFs. EPA has promulgated these regulations at 40 C.F.R. Part 265, Subparts AA, BB and CC ("Subpart AA, BB and CC regulations"). EPA has not authorized Rhode Island to administer the Subpart AA, BB and CC regulations.

17. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Thus, a violation of a requirement of an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6926(g), EPA may enforce violations of any requirement of Subtitle C of RCRA, including requirements of the federally-authorized Rhode Island hazardous waste program and of Subparts AA, BB and CC, by issuing administrative orders to assess a civil penalty and to require compliance.

18. Sections 3008(a)(1) and (a)(2) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (a)(2), authorizes EPA to commence administrative penalty and compliance actions to enforce the requirements of the federally-approved Rhode Island hazardous waste program, TSDF permit requirements, and Subparts AA, BB and CC. Violations of these requirements that occurred after January 12, 2009, are subject to penalties up to $37,500 per day for each violation, while violations that occur after November 2, 2015, are subject to penalties up to $71,264.

B. General Allegations

19. Respondent Safety-Kleen is a Wisconsin corporation and a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and RI HW Rule 3.0. At all times relevant to this CAFO, Respondent has been the "owner" and "operator" of the Cranston Facility as defined in 40 C.F.R. § 260.10 and in RI HW Rule 3.0.

20. At all times relevant to this CAFO, Respondent has treated, stored, and disposed of "hazardous wastes" at the Cranston Facility as defined at Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), RI HW Rule 3.0, and 40 C.F.R. § 261.3, and has operated the Cranston Facility under TSDF permits issued to Respondent by RI DEM.

21. The general "Compliance" paragraph of Cranston Facility's 2012 TSDF Permit states that Safety-Kleen's permit renewal application submitted in June 2010, and as finally amended in July 2012 ("Permit Application"), is considered to be part of the 2012 TSDF Permit. Condition 39 of the 2012 TSDF Permit states that Safety-Kleen shall operate the Cranston Facility as described in its Permit Application.

22. At all times relevant to this CAFO, Respondent has been a "generator" of hazardous wastes at the Cranston Facility as defined in 40 C.F.R. § 260.10 and RI HW Rule 3.0.

23. Accordingly, as the owner and operator of a facility that generates, treats, stores and disposes of hazardous waste, Respondent is subject to RCRA, the Facility's TSDF permit, RI HW Rules 1.0 - 12.0, and the Subpart AA, BB and CC regulations.

24. At all times relevant to this CAFO, Tanks 10, 11, 12, 13 (four 2,500 gallon waste storage tanks) and Tank 14 (a 5,000 gallon blending tank) at the Cranston Facility have been

subject to RCRA Subpart CC. See Section 4.51 of the Permit Application, which states that Subpart CC applies to Tanks 10 through 14.

25. From prior to December 2011 until November 2013, the Cranston Facility conducted distillation operations that managed hazardous wastes with organic concentrations of at least 10 ppmw while subject to a TSDF permit. Specifically, the Cranston Facility distilled hazardous wastes with organic concentrations of at least 10 ppmw, such as waste perchloroethylene and degreaser solvents, using a distiller connected by vents and piping to Tanks 10 through 14. Organic vapor emissions from these distillation operations were routed through a closed-vent system and control device (a regenerative carbon adsorption system), and discharged through one or more process vents into the atmosphere.

26. Accordingly, from prior to December 2011 until November 2013, the Facility's distillation operation, the closed-vent system and regenerative carbon adsorption control device, and other associated equipment were subject to the requirements of RCRA Subpart AA. See 40 C.F.R. §§ 264.1030(a) - (b), 264.1032(a) - (b), 264.1033, 264.1035 and 264.1036.

27. From no later than December 2013 to the present, organic vapor emissions from Tanks 10, 11, 12, 13 and 14 have continued to be routed through the Facility's closed-vent system and regenerative carbon adsorption control device and discharged through one or more process vents into the atmosphere.

28. Accordingly, from no later than December 2013 to the present, Tanks 10, 11, 12, 13 and 14, and the closed-vent system and regenerative carbon adsorption control device, have been and remain subject to the requirements of RCRA Subpart CC, and to Subpart AA

requirements referenced in Subpart CC. See Subpart CC at 40 C.F.R. §§ 264.1084 and 264.1087, and Subpart AA at 40 C.F.R. §§ 264.1033 and 264.1034.

C. RCRA Violations

1. Failure to Properly Conduct Hazardous Waste Determinations

29. RI HW Rule 5.8 requires generators of solid wastes to determine if their wastes are hazardous wastes pursuant to 40 C.F.R. § 262.11and RI. HW Rule 3.0. Forty C.F.R. § 262.11 requires persons generating waste to determine if it is hazardous using various criteria and procedures. The Facility's 2012 TSDF permit at Condition 23 (Waste Analysis) requires compliance with 40 C.F.R. § 264.13 as modified by RI HW Rules 8.1A 15 and 8.1A 16, as described in Section 5.00 (Waste Analysis Plan) of the Permit Application. Forty C.F.R. § 264.13 (General Waste Analysis) requires that before an owner or operator treats, stores or disposes of any hazardous wastes, it must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

30. At the time of EPA's RCRA Inspection of the Cranston Facility on May 13-15, 2013, Respondent failed to properly conduct hazardous waste determinations for four 55-gallon drums and for Tank 33, a 6,500 gallon waste antifreeze/ethylene glycol tank.

31. Specifically, at the time of EPA's RCRA Inspection, Drums 130323033580, 130413543910, 130420690822 and 130503938641 were all labeled as containing non-EPA regulated hazardous waste. However, each of these drums' tested levels of lead, tetrachloroethene, and/or chromium were above RCRA regulatory threshold levels for toxic lead, tetrachloroethene and chromium wastes. In addition, at the time of EPA's RCRA inspection,

Tank 33 was not labeled as containing hazardous wastes, but the tank's tested benzene and tetrachloroethene levels were above the RCRA regulatory thresholds for toxic benzene and toxic tetrachloroethene wastes.

32. Thus, at the time of EPA's RCRA Inspection, the four above-described drums and Tank 33 contained lead, tetrachloroethene, chromium, and/or benzene hazardous wastes for which no proper waste determinations were made. Accordingly, Safety-Kleen violated RI HW Rule 5.8, which references 40 C.F.R. § 262.11, and also violated the Facility's 2012 TSDF permit, which references 40 C.F.R. § 264.13.

2. Storage of Hazardous Waste in Unpermitted Areas

33. Section 3.21 of the Permit Application states that the loading areas of the Cranston Facility's Buildings A, B and D, and the loading dock of Building L, are the areas of the Facility permitted to accept waste transport vehicles. Condition 42 of the 2012 TSDF Permit approves a 72-hour temporary storage and transfer area for the Facility in accordance with RI HW Rule Rule 6.15, but only within Buildings B and C and only in accordance with Section 3.80 of the Permit Application.

34. At the time of EPA's RCRA Inspection, there were two waste-containing trailers, parked without tractors attached, located outside the Cranston Facility that were not at or near the loading/unloading areas of Buildings A, B, D or L.

35. Accordingly, Safety-Kleen violated the Facility's 2012 TSDF Permit at Section 3.21 of the Permit Application.

3. Failure to Minimize Possibility of Unplanned Hazardous Waste Release

36. Condition 28 of the 2012 TSDF Permit requires that Safety-Kleen comply with 40 C.F.R. Part 264, Subpart C, including 40 C.F.R. § 264.31. Further, RI HW Rule 8.0, which applies to TSD facilities such as the Cranston Facility, incorporates various provisions of 40 C.F.R. Part 264, including 40 C.F.R. § 264.31. See RI HW Rule 8.1(a).

37. Forty C.F.R. § 264.31 requires that the Cranston Facility "be designed, constructed, maintained, and operated to minimize the possibility of … any unplanned sudden or non-sudden release of hazardous waste … to air, soil or surface water."

38. At the time of EPA's RCRA Inspection, the Cranston Facility's parking lot and adjacent areas where hazardous waste-containing trailers were located had surface cracks and gaps. Spills or leaks of hazardous wastes onto these surfaces could potentially release hazardous wastes into soil or surface water.

39. Accordingly, Safety-Kleen violated Condition 28 of the 2012 TSDF Permit and RI HW Rule 8.0, both of which reference 40 C.F.R. § 264.31.

4. Failure to Separate Containers of Incompatible Wastes

40. Condition 34 of the 2012 TSDF Permit requires Safety-Kleen to comply with 40 C.F.R. Part 264, Subpart I ("Subpart I"), as modified by certain sections of RI HW Rule 8.1A. Further, RI HW Rule 5.2 incorporates by reference 40 C.F.R. § 262.34, which in turn incorporates Subpart I. Thus, in order to comply with its 2012 TSDF Permit and RI HW Rule 5.2, Safety-Kleen must comply with all applicable requirements of Subpart I, set out at 40 C.F.R. §§ 265.170 - .178.

41. Pursuant to Subpart I, Safety-Kleen must ensure that a storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers is segregated from the other materials or is protected from them by means of a dike, berm, wall or other device. See 40 C.F.R. § 265.177(c).

42. At the time of EPA's RCRA inspection, there were incompatible wastes stored within the same berm-type containment structure along the westerly wall in Building C. A 55-gallon drum containing sulfuric acid was stored above a 55-gallon drum containing potassium hydroxide within the same containment structure. In addition, a 55-gallon drum of sodium hydroxide was stored above a 55-gallon drum of sulfuric acid. Sulfuric acid and potassium hydroxide, and sodium hydroxide and sulfuric acid, are incompatible wastes that when mixed can potentially generate heat or violent reactions. See 40 C.F.R. Part 264, Appendix V.

43. Accordingly, Safety-Kleen violated Condition 34 of the 2012 TSDF Permit and RI HW Rule 5.2, both of which reference 40 C.F.R. § 265.177(c).

5. Failure to maintain adequate aisle space between containers of hazardous waste

44. Condition 28 of the 2012 TSDF Permit requires that Safety-Kleen comply at the Cranston Facility with 40 C.F.R. Part 264, Subpart C, including 40 C.F.R. § 264.35. Further, RI HW Rule 8.1, which applies to TSD facilities such as the Cranston Facility, incorporates various provisions of 40 C.F.R. Part 264, including 40 C.F.R. § 264.35.

45. Forty C.F.R. § 264.35 requires that aisle space must be maintained to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of the facility in an emergency. Further, Section 4.31 of

the Permit Application requires that waste containers on pallets be stored in accordance with the aisle space requirements of 40 C.F.R. § 264.35, and specifies a minimum of two feet of aisle space for wastes stored in Buildings C and D.

46. At the time of EPA's RCRA inspection, there were four aisles between rows of palletized waste containers in the Facility's Building C and Building L with aisle space of less than two feet. For example, the aisle apace between two rows of palletized containers in Building C was only 10 inches wide. The insufficient aisle spaces affected a total of approximately 80 55-gallon drums.

47. Accordingly, Safety-Kleen violated Condition 28 of the 2012 TSDF Permit, Section 4.31 of the Permit Application, and RI HW Rule 8.1, all of which reference 40 C.F.R. § 265.35.

6. Failure to Meet Subpart AA Air Emission Control Limit

48. As alleged above in Section III.B, from prior to December 2011 until November 2013, the Cranston Facility's distillation system, closed-vent system and regenerative carbon adsorption control device, and associated equipment were subject to the requirements of RCRA Subpart AA. Subpart AA required that Facility's closed-vent system and carbon adsorption control device were to be operated at all times when emissions may have been vented to them. See 40 C.F.R. § 264.1033(m).

49. The Cranston Facility's regenerative carbon adsorption system was required to reduce total organic emissions from all affected process vents at the Facility by 95%. See 40 C.F.R. § 264.1032(a)(2). The carbon adsorption system was required to be designed and

operated to recover organic vapors vented to it with an efficiency of 95% or greater. See 40 C.F.R. §§ 264.1032(b) and 264.1033(b).

50. Safety-Kleen's carbon adsorption system failed to meet the 95% control rate during emissions testing performed on December 8 and 9, 2011.

51. Accordingly, Safety-Kleen violated 40 C.F.R. §§ 264.1032(a)(2) and 264.1032(b).

7. Failure to Keep Compliance Documentation for Process Vent Standards

52. Owners and operators of facilities subject to Subpart AA must comply with the recordkeeping requirements of 40 C.F.R. § 264.1035. See 40 C.F.R. § 264.1035(a)(1). These recordkeeping requirements include keeping up-to-date documentation of compliance with Subpart AA's process vent standards at 40 C.F.R. § 264.1032. See 40 C.F.R. § 264.1035(b)(2).

53. The required documentation of compliance with Subpart AA's process vent standards includes information and data regarding annual throughput and operating hours of each affected unit, and estimated emission rates for each affected process vent and for the overall facility. See 40 C.F.R. § 264.1035(b)(2)(i) and (ii).

54. At the time of EPA's RCRA Inspection, Safety-Kleen had almost none of this required documentation of compliance with Subpart AA's process vent standards.

55. Accordingly, Safety-Kleen violated 40 C.F.R. §§ 264.1035(b)(2)(i) and (ii).

8. Failure to Keep Compliance Documentation for Closed-Vent Systems and Control Devices

56. Subpart AA's recordkeeping provisions require keeping up-to-date documentation of compliance with Subpart AA requirements for closed-vent system and control devices set out in 40 C.F.R. § 264.1033. See 40 C.F.R. §§ 264.1035(a)(1) and 264.1035(b)(4).

57. The required documentation of compliance for a design analysis of a regenerative carbon adsorption system must include consideration of the vent stream composition, constituent concentrations, flow rate, relative humidity and temperature, and must establish the design exhaust vent concentration level, the number and capacity of the carbon beds, the type and capacity of the activated carbon used for the carbon beds, the design total steam flow for each complete regeneration cycle, the duration of the carbon bed steaming and cooling/drying cycles, the design carbon bed temperature after regeneration, the design carbon bed regeneration time, and the design service life of the carbon. See 40 C.F.R. §§ 264.1035(b)(4) and (b)(4)(iii)(F).

58. At the time of EPA's RCRA Inspection, Safety-Kleen had no design analysis for its regenerative carbon adsorption system, and had almost none of the above-listed information.

59. Accordingly, Safety-Kleen violated 40 C.F.R. §§ 264.1035(b)(4) and (b)(4)(iii)(F).

9. Failure to Keep Records for Carbon Replacement in Carbon Adsorption System

60. Subpart AA's recordkeeping provisions require a facility's operating record to contain up-to-date information regarding the dates when existing carbon in a regenerative carbon adsorption system was replaced with fresh carbon. See 40 C.F.R. §§ 264.1035(c) and (c)(6).

61. At the time of EPA's RCRA Inspection, the Cranston Facility's operating records contained no records regarding carbon replacement.

62. Accordingly, Safety-Kleen violated 40 C.F.R. §§ 264.1035(c) and (c)(6).

10. Failure to Mark Equipment in Subpart BB Service

63. RCRA Subpart BB at 40 C.F.R. § 264.1050(d) requires that equipment in Subpart BB service be marked in a manner to readily distinguish it from other pieces of equipment.

64. At the time of EPA's RCRA inspection, there was yellow horizontal and vertical piping that connected the Facility's two vacuum pumps to Tanks 10 through 13, and Tank 14, through a knockout tank associated with the carbon adsorption system. This piping was in Subpart BB service but was not marked to distinguish it from other equipment not subject to Subpart BB.

65. Accordingly, Safety-Kleen violated 40 C.F.R. § 264.1050(d).

11. Failure to Cap Open-Ended Pipes

66. RCRA Subpart BB at 40 C.F.R. § 264.1056(a)(1) requires open-ended valves and lines in Subpart BB service be equipped with a cap, blind flange, plug, or a second valve.

67. At the time of EPA's RCRA Inspection, the yellow horizontal piping in Subpart BB service described in Count 10 above had two open ends that were not capped or plugged.

68. Accordingly, Safety-Kleen violated 40 C.F.R. § 264.1056(a)(1).

12. Failure to Meet Subpart CC Air Emission Control Limit

69. As alleged above in Section III.B, from no later than December 2013 to the present, Tanks 10, 11, 12, 13 and 14, and the Facility's closed-vent system and regenerative carbon adsorption control device, have been and remain subject to the requirements of RCRA Subpart CC, and to Subpart AA requirements referenced in Subpart CC.

70. Tanks 10, 11, 12, 13 and 14 are subject to "Tank Level 1 controls" as defined by Subpart CC, and are connected by a closed-vent system that is vented to the Facility's regenerative carbon adsorption control device. See 40 C.F.R. §§ 264.1082(b), 264.1084(c), 264.1084(g), and 264.1087.

71. The Facility's carbon adsorption control device must be operating whenever hazardous waste is managed in Tanks 10, 11, 12, 13 or 14. See Subpart CC at 40 C.F.R. §§ 264.1084(c) and (c)(2)(iii)(B).

72. The Facility's carbon adsorption control device must be designed and operated to reduce total organic vapors vented to the control device by at least 95% by weight. See Subpart CC at 40 C.F.R. §§ 264.1087(b)(1) and (c)(1)(i).

73. In its CAA/RCRA Information Request responses, Safety-Kleen provided carbon monitoring records showing that the Facility's carbon adsorption control device did not reduce total organic vapors by at least 95% on 12 separate days in 2014.

74. Accordingly, Safety-Kleen violated Subpart CC at 40 C.F.R. §§ 264.1087(b)(1) and (c)(1)(i).

IV. GENERAL TERMS

75. The terms of this CAFO shall apply to and be binding on Complainant and on Respondent, its officers, directors, successors and assigns.

76. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction over the subject matter described in this CAFO and that the CAFO states claims upon which relief can be granted against Respondent. Respondent neither admits nor denies the

factual allegations and alleged violations of law contained in Sections III.B and III.C above. For the purposes of this CAFO and any action necessary to enforce it, Respondent waives any right to a judicial or administrative hearing or appeal regarding this CAFO, and to otherwise contest the allegations of this CAFO or to appeal the CAFO's Final Order.

77. Respondent consents to the assessment of the civil penalty set out in Section VI below. Respondent also consents to the issuance of any compliance provisions and any conditions specified in this CAFO.

78. All notices and submissions required by this CAFO shall be sent to:

For EPA Region 1:

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Mail code OES04-3
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
or
viggiani.steven@epa.gov

For Respondent:

Timmery A. Fitzpatrick
Senior Environmental Attorney
Clean Harbors Environmental Services
P.O. Box 9149
42 Longwater Drive
Norwell, MA 02061-9149
or
fitzpatrick.timmery@cleanharbors.com

and

Safety-Kleen Systems, Inc.
Attn: General Counsel
42 Longwater Drive
Norwell, MA 02061-9149

V. COMPLIANCE CERTIFICATION AND COMPLIANCE ORDER

79. Respondent certifies that the Cranston Facility is now in compliance with Sections 3002 and 3004 of RCRA and the federal and state hazardous waste regulations promulgated thereunder, including but not limited to the specific federal and state hazardous waste regulations cited in Section III above. Respondent further certifies that the Cranston Facility is now in compliance with its applicable TSDF permit and all TSDF permit requirements.

80. Respondent certifies that it has completed the following RCRA compliance actions at the Cranston Facility:

a. Respondent has ceased storing waste-containing vehicles in the Facility's parking lot, and in areas other than those designated for such storage in Section 3.21 of the Permit Application;

b. Respondent has paved the Facility's parking lot and adjacent areas so that there are no longer surface cracks and gaps through which hazardous wastes could potentially be released into soil or surface water, in accordance with Condition 28 of the 2012 TSDF Permit and RI HW Rule 8.0, which both reference 40 C.F.R. § 264.31;

c. Respondent has separated all incompatible hazardous wastes in Building C and elsewhere in the Facility where hazardous wastes are stored, in accordance

with Condition 34 of the 2012 TSDF Permit and RI HW Rule 5.2, which both reference 40 C.F.R. § 265.177(c);

d. Respondent has ensured that there is adequate aisle space between containers of hazardous waste in Buildings C and L, and elsewhere in the Facility where containers of hazardous waste are stored, in accordance with Condition 28 of the 2012 TSDF Permit, Section 4.31 of the Permit Application, and RI HW Rule 8.1, which all reference 40 C.F.R. § 265.35;

e. Respondent has addressed the Subpart BB labeling violation alleged in Section III.C.10 above by installing check valves that prevent vapor backflow from the carbon adsorption system and the knockout tanks into the unlabeled yellow piping, and has tagged the equipment at the check valves as being in Subpart BB service, in accordance with 40 C.F.R. § 264.1050(d); and

f. Respondent has ensured that any open-ended valves or lines in Subpart BB service have been equipped with a cap, blind flange, plug or second valve, in accordance with 40 C.F.R. § 264.1056(a)(1).

81. Respondent agrees to perform the following RCRA compliance actions at the Cranston Facility as of the effective date of this CAFO:

a. Respondent shall comply with all applicable RCRA Subpart CC requirements for Tanks 10, 11, 12, 13 and 14. Since these tanks' air emissions are being controlled through a closed-vent system and control device (the Facility's regenerative carbon adsorption system), Respondent shall also

comply with all applicable Subpart CC requirements for the closed-vent system and regenerative carbon adsorption control device, including but not limited to the requirements of 40 C.F.R. § 264.1084(g) and (g)(1)(iv), and 40 C.F.R. § 264.1087. These requirements include a 95% organic vapor control rate for the carbon adsorption control device set out at 40 C.F.R. § 264.1087(c)(1)(i).

b. Respondent shall comply with all applicable RCRA Subpart AA requirements referenced in RCRA Subpart CC at 40 C.F.R. § 264.1087 for the closed-vent system and regenerative carbon adsorption control device, including various Subpart AA requirements in 40 C.F.R. §§ 264.1033 - 264.1035. These Subpart AA requirements include design and operation requirements in 40 C.F.R. § 264.1033(k); monitoring and inspection requirements in 40 C.F.R. §§ 264.1033(f)(2) and (l); carbon changeout and disposal requirements in 40 C.F.R. § 264.1033(g) and (n); and performance test and design analysis requirements in 40 C.F.R. §§ 264.1034(c) and 264.1035(b)(4)(iii) (as referenced by 40 C.F.R. §§ 264.1087(c)(5)(i) and (c)(5)(iii) - (v)).

c. Respondent shall not conduct 72-hour temporary storage of waste-loaded inbound trucks in the Facility's parking lot unless and until the Facility's TSDF permit is revised to allow it.

d. From December 31, 2016 or from the effective date of this CAFO (whichever is later) through December 31, 2017, Respondent shall sample and analyze the contents of Tank 33 for benzene and tetrachloroethene prior to the contents being shipped off-site. All such testing and analyses shall be performed in accordance with EPA methods, and the analytical results shall be maintained at the Cranston Facility for EPA and RI DEM inspection. In addition, Respondent shall provide the analytical results of the testing to EPA Region 1 in an electronic format in two semi-annual reports. The first report, which shall include the analytical results generated through May 31, 2017, shall be provided by no later than June 30, 2017; the second report, which shall include analytical results generated through December 31, 2017, shall be provided by no later than January 31, 2018.

VI. CIVIL PENALTY

82. Respondent shall pay a civil penalty of $178,070. EPA Region 1 has determined, consistent with statutory penalty criteria and applicable policies, that this is an appropriate settlement penalty based on the nature of the alleged violations and other relevant factors.

83. To pay the penalty, Respondent shall submit, no later than 30 days after the effective date of this CAFO, a cashier's or certified check in the amount of $178,070, payable to the order of the "Treasurer, United States of America," and referencing the title of this action and the RCRA case docket number (RCRA-01-2017-0007). The check shall be sent via regular mail to the following address:

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

If Respondent sends the check via express mail, the following address shall be used:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
phone 314-418-4087

Respondent shall send a notice of the penalty payment and a copy of the check to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Mail code ORA-18-1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

and

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Mail code OES04-3
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

84. If Respondent fails to pay the full amount of the civil penalty by its due date, Respondent shall pay interest on the late amount pursuant to 31 U.S.C. § 3717, plus any late charges to cover the cost of processing and handling the delinquent claim. The interest on the

late amount shall be calculated at the rate of the U.S. Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2).

85. In the event that Respondent fails to comply with any of requirements set out in Paragraphs 80 and 81 of this CAFO, Respondent shall be liable for stipulated penalties in the amount of $1,000 for each day for the first through thirtieth day for each failure to comply with any such requirement, and $2,000 for each day thereafter for each such failure.

86. Respondent shall pay stipulated penalties plus any interest due thereupon within fifteen (15) days of receipt of a written demand by EPA Region 1 for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 83 above. EPA may, in its sole discretion, elect not to seek stipulated penalties or to compromise any portion of stipulated penalties that accrue pursuant to this CAFO.

87. All payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and 26 C.F.R. § 1.162-21, and Respondent shall not use these payments in any way as, or in furtherance of, a tax deduction under federal law.

VII. EFFECT OF SETTLEMENT

88. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for the violations set out in Section III.C of this CAFO.

89. Nothing in this CAFO shall be construed to limit the authority of EPA or the United States to undertake any action against Respondent for criminal activity, or to respond to

conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment. EPA reserves all rights and remedies available to it to enforce the provisions of this CAFO, RCRA and its implementing regulations and permits, and any other federal, state or local law or regulation.

90. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal or state law, and shall not be construed to be a ruling or determination regarding any issue related to any federal, state or local permit. Except as provided in Paragraph 88 above, compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to environmental laws and regulations administered by EPA.

91. Each Party shall bear its own costs, disbursements and attorneys fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other Party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

92. The Parties' undersigned representatives certify that they are fully authorized by their Party to enter into the terms and conditions of this CAFO and to execute and legally bind their Party to it.

93. The Parties agree to the issuance of this Consent Agreement and attached Final Order. Upon filing the Consent Agreement with the Regional Hearing Clerk, Complainant shall transmit a copy to Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Office, on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement, In the Matter of Safety-Kleen Systems, Inc., Docket No. RCRA-01-2017-0007, is hereby agreed to and signed:

FOR RESPONDENT

William F. Connors
Senior Vice President
42 Longwater Drive
Norwell, MA 02061-9149

Date 3/20/17

The foregoing Consent Agreement, In the Matter of Safety-Kleen Systems, Inc., Docket No. RCRA-01-2017-0007, is hereby agreed to and signed:

FOR COMPLAINANT

Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1
5 Post Office Square. Suite 100
Boston, Massachusetts 02109-3912

3/23/17
Date

FINAL ORDER

In accordance with 40 C.F.R. § 22.18(b) of the Consolidated Rules, the Parties to this matter have forwarded the foregoing executed Consent Agreement (In the Matter of Safety-Kleen Systems, Inc., Docket No. RCRA-01-2017-0007) for final approval. The Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of this CAFO, which shall be effective on the date that it is filed with the Regional Hearing Clerk.

SO ORDERED:

LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1
5 Post Office Square. Suite 100
Boston, Massachusetts 02109-3912

March 27, 2017
Date

CERTIFICATE OF SERVICE

I certify that I hand-delivered to the office of the Regional Hearing Clerk of EPA Region 1 the original and one copy of the final Consent Agreement and Final Order ("CAFO") in the above-captioned case, together with a cover letter, and arranged to send copies of the CAFO and letter via mail to Respondent at the addresses set forth below:

HAND-DELIVERY: (original and one copy)

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

VIA FIRST CLASS MAIL:

Timmery A. Fitzpatrick
Senior Environmental Attorney
Clean Harbors Environmental Services
P.O. Box 9149
42 Longwater Drive
Norwell, MA 02061-9149

and

Safety-Kleen Systems, Inc.
Attn: General Counsel
42 Longwater Drive
Norwell, MA 02061-9149

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1

3/28/17
Date