

From: McDougall, Robert
Sent: Thursday, September 26, 2019 12:23 PM
To: 'jusino@area-research.org' <jusino@area-research.org>
Subject: Public Records Request

Dear Mr. Jusino:

On September 23, 2019, you made a public records request for court filings concerning two recent settlements between the State of Vermont and Safety-Kleen Systems. Specifically you requested, “*copies of any Complaints outlining the alleged violations, as well as any Consent Agreements and Final Orders outlining the conclusions of the case, along with the calculation worksheets of the financial penalties.*”

Attached are documents responsive to your request, i.e. the Pleadings by Agreement, Stipulations for the Entry of Consent Order and Consent Orders in the two matters you referenced:

State of Vermont, Agency of Natural Resources v. Safety-Kleen Systems, Inc., Docket No. 380-6-17 Wncv

- Pleadings By Agreement
- Stipulation for the Entry of Consent Order and Final Judgment Order
- Consent Order and Final Judgment Order (dated August 3, 2017)

State of Vermont v. Safety-Kleen Systems, Inc., Docket No. 61-2-19 Wncv

- Pleadings By Agreement
- Stipulation for the Entry of Consent Order and Final Judgment Order
- Consent Order and Final Judgment Order (dated March 14, 2019)

To the extent your request also seeks penalty calculation worksheets, such records are withheld from disclosure pursuant to 1 V.S.A. § 317(c)(3) and (4) as attorney-client privileged materials and attorney work product materials.


To the extent that you feel this response is a denial of your request, you may appeal to the Deputy Attorney General, Joshua Diamond. Any appeal should be made in writing and sent to him at this address:

Deputy Attorney General Joshua R. Diamond
Office of the Attorney General
109 State Street
Montpelier, VT 05609

Sincerely,

Rob McDougall

Robert F. McDougall
Assistant Attorney General
Chief, Environmental Protection Division
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-3186
robert.mcdougall@vermont.gov

 Please consider the environment before printing this e-mail

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



TEL: (802) 828-3171
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<http://www.ago.vermont.gov>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

June 26, 2017

Washington Superior Court
Attn: Donna Waters, COM
65 State Street
Montpelier, VT 05602

Re: *State of Vermont Agency of Natural Resources v. Safety-Kleen Systems, Inc.*
Docket No. _____ Wncv

Dear Ms. Waters,

Enclosed for filing please find the parties' Pleadings by Agreement and Stipulation for the Entry of Final Judgment Order. Additionally, for the Court's consideration, please find the parties' proposed Final Judgment Order.

To facilitate public participation in proposed settlements of civil environmental enforcement case, it is the policy of the Vermont Attorney General's Office to post all such proposed settlements on its website at the time of their submission to the Court for a period of 21 days. This posting provides notice to the public who may seek to intervene under Rule 24 of the Vermont Rules of Civil Procedure for the purpose of presenting information or argument to the Court relevant to the proposed settlement.

Consistent with this policy, the State requests that the Court refrain from taking action on the proposed settlement for the duration of the 21-day posting period. I am authorized to state that Leach Farms, Inc. does not oppose this request. Please do not hesitate to contact me with questions about the Attorney General's policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith W. Flynn".

Keith W. Flynn
Assistant Attorney General

cc: Safety-Kleen Systems, Inc.
c/o William F. Connors
42 Longwater Drive
Norwell, MA 02061

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
Docket No. _____ Wncv

STATE OF VERMONT,)
AGENCY OF NATURAL)
RESOURCES,)
Plaintiff,)
v.)
SAFETY-KLEEN SYSTEMS, INC.)
Defendant.)

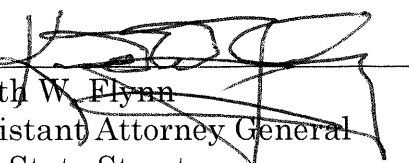
CERTIFICATE OF SERVICE

I hereby certify that I, Keith Flynn, Assistant Attorney General for the State of Vermont, sent a copy of *Pleadings by Agreement, Stipulation for the Entry of Final Judgment Order and Consent Order and Final Judgment Order* in the above-captioned matter, to the Defendant at the following address on this date:

Safety-Kleen
Attention Donald Smith
42 Longwater Drive
Norwell, MA 02061

DATED at Montpelier, Vermont this 26th day of June, 2017.

STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: 
Keith W. Flynn
Assistant Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-9606
keith.flynn@vermont.gov

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Montpelier, VT
05609

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
Docket No. Wncv

STATE OF VERMONT,)
AGENCY OF NATURAL)
RESOURCES,)
 Plaintiff,)
))
v.)
))
SAFETY-KLEEN SYSTEMS, INC.)
 Defendant.)

PLEADINGS BY AGREEMENT

The State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Defendant Safety-Kleen Systems, Inc. hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

THE STATE’S ALLEGATIONS

The Parties

1. The Vermont Agency of Natural Resources (ANR or the Agency) is an agency of the State of Vermont created through 3 V.S.A. § 2802. The principal situs of the State of Vermont is Montpelier in Washington County.
2. Safety-Kleen Systems, Inc. (Defendant) is a Wisconsin for-profit corporation, authorized to do business in Vermont.
3. Defendant operates a commercial hazardous waste storage and transfer facility at 23 West Second Street, Barre, Vermont (the Facility).

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4. Defendant provides services to customers primarily engaged in the business of automotive repair, automotive salvage, industrial maintenance, manufacturing, photo processing and dry cleaning.
5. Venue is proper in Vermont Superior Court, Civil Division, Washington Unit.

Statutory and Regulatory Scheme

6. The Agency has the authority to regulate the generation, storage, collection, transport, treatment, disposal, use, reuse, and recycling of hazardous waste in Vermont through 10 V.S.A. Chapter 159 and the Vermont Hazardous Waste Management Regulations (VHWMR).
7. Defendant's Facility is a "certified hazardous waste facility" as defined in VHWMR § 7-103. "Certified hazardous waste facility" is a treatment, storage or disposal facility which is authorized to operate" under a federally approved state hazardous waste program. Defendant is also a "generator" as defined in the VHWMR.
8. Defendant is required to comply with the VHWMR and Vermont's waste management laws, 10 V.S.A. Chapter 159.
9. Petroleum is both a hazardous waste and hazardous material under VHWMR § 7-103. The definition of "hazardous material" in VHWMR § 7-103 specifically includes "petroleum" and "hazardous waste." Waste petroleum is a listed hazardous waste. VHWMR § 7-211, VHWMR § 7-205.

10. VHWMR § 7-103 defines “Hazardous Waste Management Unit” as “a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area.” Examples of Hazardous Waste Management Units (HWMU) include “a tank and its associated piping and underlying containment system and a container storage area.”
11. “Storage” is defined in VHWMR § 7-103 as “the actual or intended containment of wastes, either on a temporary basis or for a period of years; in such a manner, as not to constitute disposal of such wastes.”
12. Pursuant to 10 V.S.A. § 8221, the Secretary of the Agency may bring an action in superior court to enforce Vermont’s environmental laws. The action shall be brought by the Attorney General in the name of the State.
13. Pursuant to 10 V.S.A. § 8002(9), a “violation” is defined as “noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permit, assurances, or orders.” Chapter 159 (Waste Management) is one of the statutes listed in 10 V.S.A. § 8003.
14. Pursuant to 10 V.S.A. § 8221(b)(6), each violation that occurs is subject to civil penalties of up to \$85,000 for each initial violation and up to \$42,500 for each day a violation continued.

Applicable Vermont Hazardous Waste Management Regulations

15. Under VHWMR § 7-311(b)(1), containers or tanks holding incompatible hazardous wastes must not be stored in the same enclosure, building or structure unless they are segregated in a manner that prevents the wastes from coming into contact with one another under any circumstances (such as spillage or simultaneous leakage).
16. VHWMR § 7-311(d)(1) requires that small and large quantity generators shall maintain, at a location apart from the short-term storage area, a list of all hazardous waste currently in storage. For generators storing hazardous waste in containers, the list shall identify each container being stored and the type of hazardous waste held by each container. Any waste being accumulated within a short-term storage area must be included on the list of hazardous waste in storage.
17. VHWMR § 7-311(d)(2) requires that small and large quantity generators shall conduct daily inspections during regular business days of each short-term storage area, and that the inspections be recorded in a log that is kept at the facility for at least 3 years.
18. Any generator who transports or offers for transport hazardous waste to a designated facility using a manifest shall sign the manifest and otherwise complete each manifest as required under VHWMR §§ 7-702(a) and 7-702(b)(4).

19. Under VHWMR § 7-806(d)(3), above-ground storage tanks (including unregistered tank trailers) holding used oil shall be managed in such a manner as to prevent rupture of the tank and to ensure that no release occurs. If a tank begins to leak, the owner or operator must immediately either transfer the used oil from that tank to another tank or to containers that are in good condition, or manage the used oil in some other way that complies with the requirements of VHWMR § 7-806(d)(3).
20. A transporter of hazardous waste shall comply with the manifest, reporting and recordkeeping requirements of VHWMR § 7-702.
21. Pursuant to VHWMR § 7-404(a)(3), a transporter who owns and operates a transfer facility in Vermont must “[h]old hazardous waste at the transfer facility for a period of ten days or less.”
22. Pursuant to VHWMR § 7-504(e)(1), every hazardous waste treatment, storage, or disposal facility issued a permit under the provisions of subchapter 5 of the VHWMR, shall, at a minimum, be designed, constructed, operated and maintained in accordance with all applicable requirements of 40 CFR Part 264.
23. Requirements of 40 CFR Part 264 which are applicable to Defendant include:
- a. Secondary containment systems must be at a minimum constructed of or lined with materials that are compatible with the wastes(s) to

be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic). 40 CFR § 264.193(c)(1).

- b. Each piece of equipment to which 40 CFR § 264.1050, subpart BB applies shall be marked in a such a manner that it can be distinguished readily from other pieces of equipment. 40 CFR § 264.1050, subpart BB generally applies to “owners and operators of facilities that treat, store, or dispose of hazardous wastes.”
- c. Additionally, and except as otherwise provided in 40 § CFR 264.1, owners and operators of facilities that have equipment to which subpart BB of part 264 applies must provide for each piece of equipment to which that subpart BB applies, equipment identification number and hazardous waste management unit identification. 40 CFR § 270.25(a)(1).

Defendant’s Hazardous Waste Facility Permit

24. On September 26, 2007, Defendant was issued a Hazardous Waste Facility Permit (Permit) pursuant to 10 V.S.A. Chapter 159 and VHWMR § 7-504 to operate a Hazardous Waste Facility in Barre, Vermont.

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25. Permit Condition 4.11 requires the maintenance of a written operating record at the facility or alternative location, approved by the Secretary, which meets the requirements of 40 CFR § 264.73 and any additional requirements listed [in the permit].
26. Permit Conditions 5.6 and 5.7 requires Defendant to inspect the facility for malfunctions and deterioration, operation errors and discharges which may be causing, or may lead to, release of hazardous waste constituents to the environment and shall remedy any deterioration or malfunction of equipment or structures which the inspector reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard.
27. Permit Condition 5.10 allows Defendant to receive, store, treat and/or transfer for disposal, hazardous wastes from the sources listed in the Waste Analysis Plan of the permit. Receipt of hazardous waste from any other sources or the conduct of hazardous waste treatment, storage, or disposal activities other than those specified in this permit is prohibited.
28. Under Permit Condition 5.11, Defendant may receive from off-site, store, treat and/or transfer for disposal, only those hazardous wastes specified in Waste Types and Characteristics (Appendix A) of the Permit.

Facts relating to Defendant and Factual Allegations

29. On June 8-10, 2016, representatives from the Agency's Waste Management and Prevention Division conducted a hazardous waste compliance evaluation inspection at the Facility.
30. During the Agency's inspection, incompatible wastes (oxidizing liquids and lead-acid batteries) were observed being stored on the same pallet in an area identified as HWMU #5.
31. During the Agency's inspection, the inventory of hazardous waste stored in the area identified as HWMU #3 was not accurate.
32. During the Agency's inspection, a record review revealed that on November 21, 2014, Defendant had not completed the required daily hazardous waste inspection at the Facility.
33. During the Agency's inspection, the floor cover in the area identified as the HWMU #1 secondary containment system was observed to be cracked and separating from the floor surface. Therefore, the secondary containment surface could not be adequately inspected for malfunctions (i.e. cracks, leaks, gap), as the surface of the secondary containment could not be directly observed. Daily inspection of the HWMU #1 by Defendant failed to identify the floor condition as an issue for remediation.

34. During the Agency's inspection, a used oil tank (used oil tank #1), located in the area identified as HWMU #1 was observed leaking from the manway.

35. During the Agency's inspection, one identification tag affixed to the return and fill ancillary piping at the Facility was observed having two separate ID numbers (one on each side of the tag).

36. During the Agency's inspection, an identification tag affixed to the return and fill gate valve was observed; this ID number was not included on Defendant's schematic diagram for the return and fill equipment.

Defendant's Non-Permitted Storage of Waste Petroleum

37. As a certified hazardous waste facility, Defendant is permitted to accept a limited amount of identified hazardous wastes at the Facility for up to one year. Waste petroleum is not an identified hazardous waste that Defendant can store for up to one year.

38. On November 13, 2015, Defendant, per manifest 004840846 SKS, transported ten containers of waste petroleum, listed as weighing 3,000 lbs., from Townline Scrap in Derby, Vermont to the Facility, for further transport to another Safety-Kleen facility in Kentucky.

39. Defendant's manifests listed its Facility in Barre as the Alternate Facility (or Generator) of the waste received from Townline Scrap.

40. On January 28, 2016, per manifest 005261550SKS, Defendant offered for transport 3,300 lbs. of waste petroleum from the Facility.
41. During the Agency's inspection on June 8-10, 2016, a document review revealed that Defendant's manifest 005261550SKS was without a generator signature and date.
42. On January 29, 2016, and February 1, 2016, Clean Harbors Environmental Service, Inc., acknowledged receipt of the waste petroleum from the Facility for shipment to the Safety-Kleen facility in Kentucky.
43. Defendant stored the approximately 3,000 lbs. of waste petroleum that it collected from Townline Scrap at the Facility from November 13, 2015, to February 1, 2016.

VIOLATIONS

44. By storing the approximately 3,000 lbs. of waste petroleum that it transported from Townline Scrap at the Facility for a period of more than 10-days, Defendant violated VHWMR § 7-404(a)(3) and conditions 5.10 and 5.11 of its Hazardous Waste Facility Permit.
45. By storing incompatible wastes in a manner that failed to prevent wastes from coming into contact with one another, as observed during the Agency's inspection on June 8-10, 2016, Defendant violated VHWMR § 7-311(b)(1).

46. By failing to maintain an accurate inventory for the hazardous wastes stored in its HWMU#3 area, as observed during the Agency's inspection on June 8-10, 2016, Defendant violated VHWMR § 7-311(d)(1) and condition 4.11(b) of its Hazardous Waste Facility Permit.
47. By failing to perform or record that a hazardous waste inspection was performed at the Facility on November 21, 2014, Defendant violated VHWMR § 7-311(d)(2) and condition 4.11 of its Hazardous Waste Facility Permit.
48. By failing to inspect and maintain a secondary floor covering in the Barre facilities' HWMU#1 secondary containment system area, as observed during the Agency's inspection on June 8-10, 2016; by allowing the floor covering in the Barre facilities' HWMU#1 secondary containment system area to become cracked and separating from the floor surface; and by failing to identify the floor condition as an issue for remediation during daily inspection of the Barre facility's HWMU#1 area, Defendant violated VHWMR § 7-504(e)(1), 40 CFR § 264.193(c), and conditions 5.6 and 5.7 of its Hazardous Waste Facility Permit.
49. By failing to properly execute Manifest 005261550SKS, i.e. by failing to have a generator signature and date, as observed during the Agency's inspection on June 8-10, 2016, Defendant violated VHWMR § 7-702(b)(4).

50. By failing to detect and cure a deficiency on an oil tank in the Facility's HWMU#1 area, i.e. the oil tank was observed to be leaking a hazardous material from the manway during the Agency's inspection on June 8-10, 2016, Defendants violated VHWMR § 7-806(d)(3).

51. By improperly placing an identification tag on the return and fill ancillary piping, e.g. piping had one number on one side and a different number on the other, in the Facility as observed during the Agency's inspection on June 8-10, 2016, Defendant violated VHWMR § 7-504(e)(1) and 40 § CFR 264.1050.

52. By affixing an identification tag to the return and fill gate valve that was not included on the schematic diagram for the return and fill equipment at the Facility, as observed during the Agency's inspection on June 8-9, 2017, Defendant violated 40 CFR § 270.25(a)(1).

DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATIONS

Defendant answers the preceding allegations as follows:

53. Defendant admits the allegations set forth in paragraphs 1-52.

54. The State and Defendant have agreed to resolve the violations set forth herein through a Stipulation for the Entry of Consent Order which has been executed by the parties and is being filed in this action together with these Pleadings by Agreement.

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05609**

55. Prior to the filing of this action, Defendant implemented appropriate hazardous waste management transport, disposal, document recording processes and storage procedures at this location such that the State does not believe it necessary to have a formal compliance plan as part of the consent order resolving this action.


SIGNATURES

DATED at Montpelier, Vermont this 26th day of June, 2017.

STATE OF VERMONT,
AGENCY OF NATURAL RESOURCES

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:


Keith W. Flynn
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
(802) 828-6906

Office of the
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GENERAL
109 State Street
Montpelier, VT
05609

DATED at Norwell, Massachusetts this 12th day of June, 2017.

SAFETY KLEEN, INC

By: *William F. Connors*
William F. Connors
Title: Sr. Vice President, Compliance

Approved as to form:

~~_____~~
Signature

~~_____~~
Name (printed)

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STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
Docket No. Wncv

| | |
|----------------------------|---|
| STATE OF VERMONT, |) |
| AGENCY OF NATURAL |) |
| RESOURCES, |) |
| Plaintiff, |) |
| |) |
| v. |) |
| |) |
| SAFETY-KLEEN SYSTEMS, INC. |) |
| Defendant. |) |

**STIPULATION FOR THE ENTRY OF CONSENT ORDER
AND FINAL JUDGMENT ORDER**

The parties, Plaintiff, the State of Vermont (the State), by and through Vermont Attorney General Thomas J. Donovan, Jr., and Defendant Safety-Kleen Systems, Inc. (Defendant), hereby stipulate and agree as follows:

WHEREAS, the State alleges in the Pleadings by Agreement filed in this action that Defendant violated Vermont's hazardous waste management regulations;

WHEREAS, Defendant has admitted in the Pleadings by Agreement that it committed these violations of Vermont's hazardous waste management regulations and of Vermont's environmental laws;

WHEREAS, the Attorney General pursuant to 3 V.S.A. Chapter 7 has the general supervision of matters and actions in favor of the State and may settle such matters as the interests of the State require;

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WHEREAS, under 10 V.S.A. § 8221, Defendant is potentially liable for civil penalties of up to \$85,000.00 for each violation and \$42,500.00 per violation for each day the violation continued;

WHEREAS, the State considered the criteria in 10 V.S.A. §§ 8010(b) and (c) in arriving at the proposed penalty amount, including the degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violations and that Defendant knew or had reason to know the violations existed;

WHEREAS, the Attorney General believes that this settlement is in the State's interest as it upholds the statutory regime of 10 V.S.A. Chapter 159 in which the violations occurred; and

WHEREAS, the Consent Order has been negotiated by and among the State and Defendant in good faith;

NOW, THEREFORE, the State and Defendant hereby stipulate and agree as follows:

1. The attached Consent Order may be entered by the Court;
2. The State and Defendant hereby waive all rights to contest or appeal the Consent Order and they shall not challenge, in this or any other proceeding, the validity of any of the terms of the Consent Order or of this Court's jurisdiction to enter the Consent Order; and

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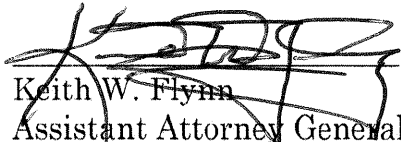
3. The Consent Order sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties' legal representatives and approved by the Court.

DATED at Montpelier, Vermont this 19th day of June, 2017.

STATE OF VERMONT,
AGENCY OF NATURAL RESOURCES

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:


Keith W. Flynn
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
(802) 828-6906

Office of the
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GENERAL
109 State Street
Montpelier, VT
05609

DATED at Norwell, Massachusetts this 12th day of June, 2017.

SAFETY-KLEEN SYSTEMS, INC

By: *William F. Connors*
William F. Connors

Title: Sr. Vice President, Compliance

Approved as to form:

~~_____
Signature~~

~~_____
Name (printed)~~

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STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
Docket No. Wnev

STATE OF VERMONT,)
AGENCY OF NATURAL)
RESOURCES,)
 Plaintiff,)
)
v.)
)
SAFETY-KLEEN SYSTEMS, INC.)
 Defendant.)

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties filing of Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221, it is hereby ADJUDGED, ORDERED and DECREED as follows:

ADJUDICATION OF HAZARDOUS WASTE MANAGEMENT

VIOLATIONS

1. Defendant Safety-Kleen Systems, Inc., (Defendant) is adjudged liable for violating the following regulations and conditions of the Hazardous Waste Facility Permit (Permit) issued to it on September 26, 2007:

- Vermont Hazardous Waste Management Regulation (VHWMR) 7-404(a)(3) and Permit conditions 5.10 and 5.11 (storage of hazardous

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waste (approximately 3,000 lbs. of waste petroleum) for more than 10 days at its Barre Facility (Facility));

- VHWMR 7-311(b)(1) (storing incompatible wastes in a manner that failed to prevent wastes from coming into contact with one another);
- VHWMR 7-311(d)(1) and Permit condition 4.11(b) (failure to maintain an accurate inventory of hazardous waste);
- VHWMR 7-311(d)(2) and Permit condition 4.11 (failure to perform or record a complete a daily hazardous waste inspection on November 21, 2014);
- VHWMR 7-504(e)(1), 40 CFR 264.193(c) and Permit conditions 5.6 and 5.7 (failure to inspect and maintain the facility for malfunction and deterioration);
- VHWMR 7-702(b)(4) (failing to properly execute a manifest (no generator signature or date on manifest 00561550SKS));
- VHWMR 7-504(e)(1) and 40 CFR 264.1059(d) (failure to properly affix a correct identification tag to a required piece of equipment);
and
- 40 CFR 270.25(a)(1) (failure to place the location of an equipment identification tag on the facility's schematic diagram).

PENALTIES

2. For the violations described above, Defendant shall pay a civil penalty of twenty-five thousand dollars (\$25,000.00).
3. Payment of the twenty-five thousand dollars (\$25,000.00) civil penalty shall be made to the "State of Vermont" and shall be sent to: Keith W. Flynn, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609.
4. Payment of the twenty-five thousand dollars (\$25,000.00) penalty shall be received by the State within 10 days of the issuance of this ORDER.

OTHER PROVISIONS

5. Defendant waives: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon Defendant under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.
6. This Consent Order is binding upon Defendant and its successors and assigns.
7. Nothing in this Consent Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order.

8. This Consent Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, this Consent Order shall become a Final Judgment Order.
9. Any violation of this Consent Order shall be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211.
10. The State of Vermont and the Court reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and circumstances set forth herein.
11. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendant's obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendant. The State reserves all rights, claims and interests not expressly waived herein.
12. This Consent Order may only be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and approved by this. Alleged representations not set forth in this Consent Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

13. Defendant shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Pleadings by Agreement occurring before the effective date of the Order, provided that the Defendant fully complies with the terms of the Consent Order set forth above.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Montpelier, Vermont this ___ day of _____, 2017.

Hon. Mary Miles Teachout
Superior Court Judge

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VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION
STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

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CIVIL DIVISION
Docket No. Wncv

380-6-17 Wncv

STATE OF VERMONT,)
AGENCY OF NATURAL)
RESOURCES,)
Plaintiff,)
v.)
SAFETY-KLEEN SYSTEMS, INC.)
Defendant.)

FILED

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties filing of Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221, it is hereby ADJUDGED, ORDERED and DECREED as follows:

ADJUDICATION OF HAZARDOUS WASTE MANAGEMENT VIOLATIONS

1. Defendant Safety-Kleen Systems, Inc., (Defendant) is adjudged liable for violating the following regulations and conditions of the Hazardous Waste Facility Permit (Permit) issued to it on September 26, 2007:

- Vermont Hazardous Waste Management Regulation (VHWMR) 7-404(a)(3) and Permit conditions 5.10 and 5.11 (storage of hazardous

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waste (approximately 3,000 lbs. of waste petroleum) for more than 10 days at its Barre Facility (Facility));

- VHWMR 7-311(b)(1) (storing incompatible wastes in a manner that failed to prevent wastes from coming into contact with one another);
- VHWMR 7-311(d)(1) and Permit condition 4.11(b) (failure to maintain an accurate inventory of hazardous waste);
- VHWMR 7-311(d)(2) and Permit condition 4.11 (failure to perform or record a complete a daily hazardous waste inspection on November 21, 2014);
- VHWMR 7-504(e)(1), 40 CFR 264.193(c) and Permit conditions 5.6 and 5.7 (failure to inspect and maintain the facility for malfunction and deterioration);
- VHWMR 7-702(b)(4) (failing to properly execute a manifest (no generator signature or date on manifest 00561550SKS));
- VHWMR 7-504(e)(1) and 40 CFR 264.1059(d) (failure to properly affix a correct identification tag to a required piece of equipment);
and
- 40 CFR 270.25(a)(1) (failure to place the location of an equipment identification tag on the facility's schematic diagram).

PENALTIES

2. For the violations described above, Defendant shall pay a civil penalty of twenty-five thousand dollars (\$25,000.00).
3. Payment of the twenty-five thousand dollars (\$25,000.00) civil penalty shall be made to the "State of Vermont" and shall be sent to: Keith W. Flynn, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609.
4. Payment of the twenty-five thousand dollars (\$25,000.00) penalty shall be received by the State within 10 days of the issuance of this ORDER.

OTHER PROVISIONS

5. Defendant waives: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon Defendant under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.
6. This Consent Order is binding upon Defendant and its successors and assigns.
7. Nothing in this Consent Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order.

8. This Consent Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, this Consent Order shall become a Final Judgment Order.
9. Any violation of this Consent Order shall be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211.
10. The State of Vermont and the Court reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and circumstances set forth herein.
11. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendant's obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendant. The State reserves all rights, claims and interests not expressly waived herein.
12. This Consent Order may only be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and approved by this. Alleged representations not set forth in this Consent Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

13. Defendant shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Pleadings by Agreement occurring before the effective date of the Order, provided that the Defendant fully complies with the terms of the Consent Order set forth above.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Montpelier, Vermont this 3rd day of August, 2017.

Mary Miles Teachout

Hon. Mary Miles Teachout
Superior Court Judge

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No.

STATE OF VERMONT,)
 Plaintiff,)
)
 v.)
)
SAFETY-KLEEN SYSTEMS, INC.)
 Defendant.)

PLEADINGS BY AGREEMENT

The State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Safety-Kleen Systems, Inc. (Defendant), hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g):

THE STATE’S ALLEGATIONS

The Parties

1. The State of Vermont Agency of Natural Resources (the Agency) is a state agency created through 3 V.S.A. § 2802. The principal situs of the State of Vermont is Montpelier in Washington County.

2. The Vermont Attorney General represents the State in civil causes “in which the State is a party” including enforcing against violations of 10 V.S.A., Chapter 159; the Vermont Hazardous Waste Management Regulations (VHWMR); and the terms and conditions of Agency issued Hazardous Waste Facility Permits. See 3 V.S.A. § 157.

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05609

3. Defendant Safety-Kleen Systems, Inc. (Defendant) is a Wisconsin for-profit Corporation, with its principal place of business in Norwell, Massachusetts, authorized to do business in the State of Vermont.

4. Defendant operates a permitted commercial hazardous waste storage and transfer facility located at 23 West 2nd Street, Barre, Vermont 05641 (the Facility).

5. Defendant provides customers with services for the collection, storage, and transportation of "vacuum waste," in addition to other waste management services.

6. Venue is proper in Vermont Superior Court, Washington Unit, Civil Division. See 12 V.S.A. § 402 ("An action before a Superior Court shall be brought in the unit in which one of the parties resides, if either resides in the State[.]").

Statutory and Regulatory Structure

7. The Agency regulates the management, transportation, treatment, disposal, and storage of hazardous waste through 10 V.S.A., Chapter 159 and the Vermont Hazardous Waste Management Regulations (VHWMR).

8. The State's hazardous waste program is federally approved and the State has been delegated primary authority for hazardous waste management by the United States Environmental Protection Agency (EPA).

9. On September 26, 2007, Defendant was issued a Hazardous Waste Facility Permit pursuant to 10 V.S.A., Chapter 159 and Vermont Hazardous

Waste Management Regulations § 7-504 to operate the Facility (Defendant's Permit).

10. Defendant's Facility is a "certified hazardous waste facility" as defined in VHWMR § 7-103. A "Certified hazardous waste facility" is a "treatment, storage or disposal facility which is authorized to operate" under a federally approved state hazardous waste program.

11. Defendant is a "generator" as defined in VHWMR § 7-103 and is subject to the standards governing "Large Quantity Generators" set out in VHWMR § 7-308, pursuant to VHWMR § 7-504(e)(4).

12. Section 7-303 of the VHWMR requires generators to determine if wastes generated are hazardous wastes in accordance with VHWMR § 7-202.

13. Pursuant to VHWMR § 7-504(e), every certified hazardous waste facility "shall, at a minimum, be designed, constructed, operated, and maintained in accordance with" a list of regulatory provisions including 40 C.F.R. 264.13(a)(1). Part 264.13(a)(1) requires that "[b]efore an owner or operator treats, stores, or disposes of any hazardous wastes . . . he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with" the VHWMR.

14. Pursuant to VHWMR §§ 7-302(c) and 40 C.F.R. 268.3 (made applicable through VHWMR §§ 7-504(e)(3) and 7-106(a)), "no generator,

transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment” or to circumvent other requirements of the VHWMR.

15. Pursuant to VHWMR §§ 7-308(b)(4), 7-504(e)(4), and § 7-106(a) and 40 C.F.R. 268.7(a), every large quantity hazardous waste generator and certified facility is required to comply with the Land Disposal Restrictions (LDRs), testing, tracking, and record keeping requirements for all hazardous waste set out in 40 CFR Part 268.7. These requirements include analyzing the hazardous waste collected and notifying entities receiving hazardous waste from the facility as to whether the waste is subject to the LDRs.

16. Pursuant to VHWMR §§ 7-308(b)(7), 7-504(e)(4), and 7-311(g), every hazardous waste generator and certified facility is required to meet certain minimum standards for secondary containment, monitoring, tank testing, and other requirements for hazardous waste storage. These include certification by a professional engineer that the containment unit complies with standards, volume monitoring for the waste stored, regular tank testing, and other requirements.

17. The VHWMR require that mechanical or physical means be employed to prevent hazardous wastes from freezing where hazardous waste is stored in aboveground tanks. VHWMR §§ 7-311(a)(3) and 7-504(e)(4).

18. Defendant's Permit includes condition 5.2 which states:

Safety-Kleen shall design, maintain and operate the facility in a manner which minimizes the possibility of fire, explosion, or any unplanned, sudden or non-sudden release of a hazardous waste or hazardous waste constituents to air, soil, surface waters or groundwater which could threaten human health or the environment. Safety-Kleen shall take all actions necessary to minimize these threats by implementing the applicable provisions of the Preparedness and Prevention Plan (Appendix G) of this permit.

19. Defendant's Permit includes condition 5.11 which states:

Safety-Kleen may receive from off-site, store, treat and/or transfer for disposal, only those hazardous wastes specified in Waste Types and Characteristics (Appendix A) of this permit.

20. Defendant's Permit includes condition 5.16 which states:

Safety-Kleen shall manage all bulk liquid hazardous waste stored at the facility in accordance with the procedures contained in Management of Waste in a Tank (Appendix L) of this permit. .

21. Defendant's Permit includes condition 7.2 which states:

Any hazardous waste removed from the facility shall be transported by a Vermont-permitted hazardous waste transporter, in accordance with the VHWMR, to an appropriate facility.

22. Defendant's Permit includes condition 7.3 which states:

Safety-Kleen shall not accept any shipment of hazardous waste which is not accompanied by a manifest, unless the waste is received from a small quantity generator where the waste is reclaimed under a contractual agreement with Safety-Kleen in accordance with VHWMR § 7-702(c), or a conditionally exempt generator who is exempt from the manifest requirements pursuant to VHWMR § 7-306(c)(3).

23. Pursuant to 10 V.S.A. § 8221, the Attorney General is authorized to bring an action in Superior Court to enforce Vermont's environmental laws.

24. Pursuant to 10 V.S.A. § 8002(9), a “violation” is defined as “noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permit, assurances, or orders.” Chapter 159 (Waste Management) is one of the statutes listed in 10 V.S.A. § 8003.

Facts Relating to Defendant

25. In operating the Facility, Defendant provides services to customers engaged in the business of automotive repair, automotive salvage, industrial maintenance, manufacturing, photo processing, dry cleaning, and other industrial or institutional clients.

26. As a hazardous waste storage and transfer facility, Defendant is permitted to accept a limited amount of identified hazardous waste and store it on-site for up to one year.

27. As a hazardous waste transporter and storage facility, Defendant is required to comply with the VHWMR and Vermont’s waste management laws, 10 V.S.A., Chapter 159.

28. In addition to its other waste management services, Defendant serves various customers with the collection and disposal of “vacuum waste,” referred to as the vacuum waste program.

29. Through the vacuum waste program, Defendant uses tanker trucks equipped with vacuums to collect waste customers, including from, but not limited to, sumps, oil/water separators, trench drains, floor drains, process tanks, drums, or other devices.

30. Defendant's employees collect waste from numerous customers in a given tanker truck along a collection route. This results in multiple customers' waste being co-mingled in the truck tank.

31. Defendant then co-mingles the all collected vacuum waste again at the Facility in a single outdoor 20,000-gallon tank which is not permitted to store hazardous waste under Defendant's Permit (the vacuum waste storage tank). During the timeframe described below, the vacuum waste storage tank was unheated and subject to freezing.

32. Defendant's vacuum waste program is designed to handle only non-hazardous waste.

33. Defendant classifies its vacuum waste program customers as either "automotive" customers or "industrial" customers.

34. For automotive customers, Defendant relies solely on generator knowledge to determine the nature of the waste collected.

35. For non-automotive customers, Defendant relies, in part, on generator knowledge to determine the nature of the waste collected. Under certain conditions, a pre-qualification laboratory analysis is conducted by a Safety-Kleen or third-party laboratory prior to accepting the customer's waste stream into the vacuum waste program. The pre-qualification analysis of the vacuum waste sample is intended to supplement the generator knowledge information provided on the profile form by the generator and identify the nature of the waste stream.

36. Defendant's employees collect a "retain sample" of each volume of vacuum waste accepted from each customer at the time of collection. Defendant stores these retain samples at the Facility for three months, so they are available for analysis should a question arise about the nature of the waste collected. After three months, Defendant disposes of the retain samples.

37. As described below, Defendant has failed to ensure that the waste collected through the vacuum waste program is not hazardous waste as defined in 10 V.S.A. Chapter 159 and the Vermont Hazardous Waste Management Regulations.

38. Additionally, Defendant improperly accepted hazardous waste through the vacuum waste program, and that waste was handled, transported, and stored in violation of 10 V.S.A. Chapter 159, the Vermont Hazardous Waste Management Regulations, and Defendant's Hazardous Waste Facility Permit.

Defendant's Failure to Make Hazardous Waste Determination

39. On or about June 8, 2016, representatives of the Agency inspected Defendant's Facility.

40. As part of this inspection Agency representatives inspected the "retain samples" for one month of vacuum waste customers.

41. Agency representatives observed that the retain samples, despite being described as "oily water," varied considerably with regard to color, viscosity, opaqueness, and number of physical phases. The samples were not

consistent with what Agency staff understood the vacuum waste program to accept, i.e. oily water.

42. Defendant's facility manager provided copies of "waste profiles" for each of the retain samples. These profiles were not internally consistent regarding the nature of the wastes and were insufficient to determine whether the collected vacuum waste was hazardous waste.

43. Upon request, Defendant provided the Agency with pre-qualification sample test results for the waste profiles corresponding with the retain samples from non-automotive customers inspected during the June 2016 inspection.

44. The pre-qualification sample tests, conducted by Defendant, were intended, in part, to verify the customer's non-hazardous waste designation prior to Defendant collecting, co-mingling, storing, and transporting the wastes as non-hazardous through the vacuum waste program.

45. Two of these pre-qualification sample tests indicated that the wastes contained hazardous waste constituents above regulatory limits: one sample indicated chromium levels of 72 mg/L, where the regulatory level is 5 mg/L and lead at 210 mg/L, significantly above the regulatory level of 5 mg/L; a second sample indicated lead results of 17 mg/L. These wastes meet the hazardous waste characteristic of toxicity and have EPA Hazardous Waste Codes D007 (for Chromium) and D008 (for lead). These wastes were stated to be 94% aqueous and 3% "organic" and 91% aqueous and 9% organic, respectively. Defendant asserts that it accepted these waste streams into the vacuum waste program

based on its belief that the waste qualified as “used oil” and was to be managed and disposed of pursuant to Subchapter 8 of the VHWMR and 40 CFR Part 279 . Defendant also asserts that the waste streams were managed as “Used Oil” by Defendant and the disposal facility. The Agency, based on the information available, cannot confirm that the pre-qualification samples tests at issue qualified for regulation as used oil under Subchapter 8 of the VHWMR.

46. All of the pre-qualification sample test results reviewed also had detection limits for certain hazardous constituents, including metals and volatile organic compounds that were significantly above regulatory levels. Some detection limits were 20 times the regulatory level. These test results were, therefore, insufficient to determine that the wastes were non-hazardous wastes.

Storage and Transport of Hazardous Waste

47. On or about January 8, 2017, Defendant shipped an approximately 5,090-gallon volume of comingled vacuum service waste from the vacuum waste storage tank at Defendant’s Facility. This waste was shipped as non-hazardous waste to Environmental Recovery Corp, a non-hazardous waste facility in Pennsylvania. This shipment was tested by that receiving facility and determined to be hazardous waste for having a pH of 12.63 and therefore exhibiting the hazardous waste characteristic of corrosivity identified by EPA Hazardous Waste Code D002.

48. Environmental Recovery Corp rejected the shipment which was then shipped by Defendant using a uniform hazardous waste manifest to a permitted hazardous waste facility in Connecticut.

49. The same waste was then shipped, using a new hazardous waste manifest identifying the waste with EPA Hazardous Waste Code D002 for corrosivity as well as Code D008 for the hazardous waste toxicity characteristic for lead, to a permitted hazardous waste facility in Maryland.

50. An additional volume of the same waste remained in the vacuum waste storage tank at Defendant's Facility with approximately 4,250 gallons of the waste being frozen.

51. The remaining volume was subsequently shipped as hazardous waste using hazardous waste manifests.

52. Defendant's permit does not authorize the storage of hazardous waste in the vacuum waste storage tank. The tank is not designed or operated to minimize the possibility of fire, explosion, or any unplanned, sudden or non-sudden release of waste to air, soil, surface waters or groundwater. The tank does not comply with the secondary containment, monitoring, tank testing, or other requirements for the storage of hazardous wastes.

53. The vacuum waste storage tank at Defendant's facility was not equipped with any mechanical or physical means to prevent the waste from freezing.

54. Vacuum waste is not included as a hazardous waste that Defendant is authorized to accept, store, or transport under Defendant's Permit.

THE STATE'S ALLEGATIONS

The State of Vermont alleges the following violations by Defendant, which violations relate specifically to the hazardous waste described in paragraphs 47-51 above:

55. Defendant violated HWMR §7-303 by co-mingling, transporting, and storing vacuum services waste by making an incorrect non-hazardous waste determination.

56. Defendant violated VHWMR 7-504(e)(1) and 40 C.F.R. § 264.13(a)(1) by failing to undertake a detailed chemical and physical analysis of the vacuum waste collected and stored at the Facility, which waste on at least one occasion and upon information and belief on other occasions constituted hazardous waste. Defendant violated VHWMR § 7-504(e)(1) and 40 C.F.R. § 264.13(b) by failing to develop and follow a written waste analysis plan for the vacuum services waste.

57. Defendant violated 40 C.F.R. § 268.3(a), applicable pursuant to VHWMR §§ 7-106(c), 7-302(b), 7-308(b)(4), and 5-504(e)(3), because Defendant accepted hazardous waste as vacuum waste and comingled that waste twice, first in the vacuum trucks, second in the vacuum waste tank, diluting restricted waste. In one instance the co-mingled and diluted waste met the hazardous waste classifications for lead and for corrosivity.

58. Defendant violated 40 C.F.R. § 268.7(a), applicable pursuant to VHWMR §§ 7-106(a), 7-308(b)(4), and 7-504(e)(4), by failing to make any determination regarding treatment or handling of the vacuum services waste and by failing to comply with any of the LDR requirements.

59. Defendant violated VHWMR §§ 504(e)(4) and 311(a)(3) by storing hazardous waste in the vacuum waste storage tank which was not equipped to prevent freezing and by allowing hazardous waste to freeze in the vacuum waste storage tank.

60. Defendant violated VHWMR § 7-311(g) by storing hazardous waste in a tank that was not marked as containing hazardous waste and which did not comply with all secondary containment, monitoring, tank testing, and other requirements.

61. Defendant violated Condition 5.2 of Defendant's Facility Permit, requiring Defendant to ensure that the facility be maintained and operated in a manner to minimize the possibility of fire, explosion, or release of hazardous waste, by storing corrosive hazardous waste in an unpermitted steel tank.

62. Defendant violated Permit Condition 5.16 of Defendant's Facility Permit, which requires that Defendant manage all bulk liquid hazardous waste stored at the facility in accordance with the procedures specified in Appendix L of the Permit which establishes the management of the hazardous waste tanks at the facility, by storing waste that exhibited the hazardous waste

characteristics of corrosivity and toxicity (for lead) in the vacuum waste storage tank which is not included in Appendix L of the Permit.

63. Defendant violated Permit Condition 5.11 of Defendant's Facility Permit, which requires that Defendant receive from off-site and store only those hazardous wastes specified in Appendix A of the Permit, by receiving from off-site and storing hazardous vacuum waste which is not included in Appendix A of the Permit.

64. Defendant violated Conditions 7.2 and 7.3 of Defendant's Facility Permit, which require that Defendant remove hazardous waste from the Facility by a Vermont-permitted hazardous waste transporter to an appropriate facility and shall not receive any hazardous waste that is not accompanied by a hazardous waste manifest, by removing hazardous vacuum waste not in compliance with Condition 7.2 and by accepting the hazardous vacuum services waste without a hazardous waste manifest.

DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATIONS

Defendant answers the preceding allegations as follows:

65. Defendant admits the factual allegations set forth in paragraphs 1-6 and 25-54 solely for purposes of resolving this case.

66. Without formally admitting or denying liability, Defendant agrees to this settlement of the above violations alleged in paragraphs 55-64 in order to resolve this case.

67. Defendant agrees that each of the violations alleged in paragraphs 55-64 above is deemed proven and established as a "prior violation" in any future State proceeding considering Defendant's compliance record, including but not limited to administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010, and permit proceedings.

Dated at Montpelier, Vermont, this 11 day of February 2019.

STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: Ryan Kane *by Lawa Murphy*
Ryan P. Kane
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802-828-2153
Ryan.Kane@vermont.gov

Dated at Norwell, Massachusetts this 1st day of February 2019.

SAFETY-KLEEN SYSTEMS, INC.

By: William F. Connors
William F. Connors
Title: Sr. Vice President, Compliance

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STATE OF VERMONT

SUPERIOR COURT

Washington Unit

CIVIL DIVISION

Docket No.

STATE OF VERMONT,)
 Plaintiff,)
)
 v.)
)
 SAFETY-KLEEN SYSTEMS, INC.)
 Defendant.)

STIPULATION FOR THE ENTRY OF CONSENT ORDER AND FINAL JUDGMENT ORDER

The parties, including Plaintiff, the State of Vermont (the State), by and through Vermont Attorney General Thomas J. Donovan, Jr., and Defendant, Safety-Kleen Systems, Inc. (Defendant), hereby stipulate and agree as follows:

WHEREAS, the State alleges in the Pleadings by Agreement filed in this action that Defendant committed violations of 10 V.S.A., Chapter 159; the Vermont Hazardous Waste Management Regulations (VHWMR); and the terms and conditions of the Agency issued Hazardous Waste Facility Permit;

WHEREAS, Defendant solely for purposes of resolving this case has admitted the factual allegations of the Pleadings by Agreement and, without formally admitting or denying liability, has agreed to the settlement of these violations of Vermont law, such violations which shall qualify as "prior violations" for purposes of any future State action considering Defendant's compliance record;

Office of the ATTORNEY GENERAL 109 State Street Montpelier, VT 05609

WHEREAS, the Attorney General pursuant to 3 V.S.A., Chapter 7 has the general supervision of matters and actions in favor of the State, and may settle such matters as the interests of the State require;

WHEREAS, under 10 V.S.A. § 8221, Defendant is potentially liable for civil penalties of up to \$85,000.00 for each violation and \$42,500.00 per violation for each day the violation continued;

WHEREAS, the State considered the criteria in 10 V.S.A. §§ 8010(b) and (c) in arriving at the proposed penalty amount, including the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the violations and that Defendant knew or had reason to know the violations existed;

WHEREAS, the Attorney General believes that this settlement is fair, reasonable, and in the State's interest as it upholds the statutory regime of 10 V.S.A., Chapter 159, in which the violations occurred; and

WHEREAS, the Consent Order has been negotiated by the State and Defendant in good faith and that the implementation of this Consent Order will avoid prolonged and complicated litigation between the parties;

NOW, THEREFORE, the State and Defendant hereby stipulate and agree as follows:

1. The attached Consent Order may be entered by the Court;
2. The State and Defendant hereby waive all rights to contest or appeal the Consent Order and they shall not challenge, in this or any other

proceeding, the validity of any of the terms of the Consent Order or of this Court's jurisdiction to enter the Consent Order; and

3. The Consent Order sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties' legal representatives and approved by the Court.

Dated at Montpelier, Vermont, this 11 day of February 2019.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:

Ryan Kane

*by Laura Murphy
with permission*

Ryan P. Kane
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802-828-2153
Ryan.Kane@vermont.gov

Dated at Norwell, Massachusetts this 15th day of February 2019.

SAFETY-KLEEN SYSTEMS, INC.

By:

William F. Connors
William F. Connors

Title:

Sr. Vice President, Compliance

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

VT SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION

Docket No. 61-2-196wncv

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STATE OF VERMONT,
Plaintiff,

v.

SAFETY-KLEEN SYSTEMS, INC.
Defendant.

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CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties filing of Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221, 3 V.S.A. § 157, and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

VIOLATIONS

1. Plaintiff, State of Vermont, has alleged violations of 10 V.S.A., Chapter 159, the Vermont Hazardous Waste Management Regulations (VHWMR), and the terms and conditions of an Agency issued Hazardous Waste Facility Permit by Defendant Safety-Kleen Systems, Inc. (Defendant) as set forth in paragraphs 25-64 of the parties' Pleadings by Agreement. Defendant admits the factual allegations set forth in paragraphs 1-6 and 25-54 of the Pleadings by Agreement solely for purposes of resolving this case, and neither admits nor denies liability for the alleged violations but agrees to the entry of

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this Consent Order and Final Judgment Order to resolve this matter.

Defendant agrees that each of the violations alleged in paragraphs 55–64 of the Pleadings by Agreement is deemed proven and established as a “prior violation” in any future State proceeding considering Defendant’s compliance record, including but not limited to administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010, and permit proceedings.

PENALTIES

2. For the violations described above, Defendant shall pay a civil penalty of seventy thousand dollars (\$70,000.00).

3. Payment of the seventy thousand dollars (\$70,000.00) civil penalty shall be made to the “State of Vermont” and shall be sent to Ryan P. Kane, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609-1001.

4. Payment of the seventy thousand dollars (\$70,000.00) civil penalty shall be received by the State within 10 days of the issuance of this Order.

OTHER PROVISIONS

5. Defendant waives: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon Defendant under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.

6. This Consent Order is binding upon Defendant and its successors, assigns, and affiliated companies.

7. Nothing in this Consent Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order.

8. This Consent Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, this Consent Order shall become a Final Judgment Order.

9. Any violation of this Consent Order shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211.

10. The State of Vermont and the Court reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and circumstances set forth herein.

11. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendant's obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendant. The State reserves all rights, claims and interests not expressly waived herein.

12. This Consent Order may only be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and approved by this Court. Alleged representations not set forth in this Consent Order, whether written or oral,

shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

13. Defendant shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Pleadings by Agreement occurring before the effective date of the Order, provided that the Defendant fully complies with the terms of this Consent Order.

14. The Court hereby finds, based on the representations of the parties, that the parties have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged and complicated litigation between the parties, and that this Consent Order is fair, reasonable, and in the State of Vermont's interest.

15. The Court hereby enters this Consent Order as an Order of the Court and Final Judgment in this case.

SO ORDERED, and ENTERED as FINAL JUDGMENT. DATED at Montpelier, Vermont, this 13th day of March, 2019.

May Miles Leach
Honorable Superior Court Judge