

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Safety-Kleen Systems, Inc.
Dolomite, Jefferson County, Alabama
USEPA Identification Number ALD983191537

Consent Order No. 24-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and Safety-Kleen Systems, Inc. (“Safety-Kleen”) pursuant to the provisions of the Alabama Environmental Management Act (“AEMA”), Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (“AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Safety-Kleen operates a waste collection, transportation, and recycling company (the “Facility”) with EPA Identification Number ALD983191537, located at 7206 Larkin Street in Dolomite, Jefferson County, Alabama. Safety-Kleen, as a result of its operations at the Facility, is a large quantity generator of hazardous waste, a hazardous waste transporter/transfer facility, a used oil generator, a used oil transporter/transfer facility, and a large quantity handler of universal waste, as those terms are defined in ADEM Admin. Code Div. 14, at all times relevant to this action.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended.

In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On March 23, 2023, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of Safety-Kleen. The CEI and a review of Safety-Kleen's compliance showed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)1.(v), at least weekly, the large quantity generator must inspect central accumulation areas. The large quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. The large quantity generator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

Safety-Kleen failed to conduct weekly inspections of the central accumulation area located at the 10-day area on the weeks of March 15, 2021, March 22, 2021, March 29, 2021, April 5, 2021, April 12, 2021, and December 20, 2021. Also, Safety-Kleen failed to conduct weekly inspections of the central accumulation area located at the small warehouse.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i)a., a large quantity generator must mark or label its containers with the words "Hazardous Waste".

Safety-Kleen failed to mark or label a tractor trailer containing waste solvent located outside of the transfer facility and two 55-gallon containers of hazardous waste in the small warehouse accumulation area with the words "Hazardous Waste".

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i)b., a large quantity generator must mark or label its containers with an indication of the hazards of the contents.

Safety-Kleen failed to mark or label two 55-gallon containers of hazardous waste in the small warehouse accumulation area with an indication of the hazards of the contents.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i)c., a large quantity generator must mark or label each container with the date upon which each period of accumulation begins clearly visible for inspection.

Safety-Kleen failed to mark or label a tractor trailer containing waste solvent located outside of the transfer facility, two 55-gallon containers of hazardous waste in the small warehouse accumulation area, and four 55-gallon containers of site-generated waste in the central hazardous waste accumulation area/10-day area with an accumulation start date.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv)a., the large quantity generator must maintain the following documents and records at the facility: the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.

Safety-Kleen failed to provide for review during the CEI job titles and employee names for each position related to hazardous waste management.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv)b., the large quantity generator must maintain the following documents and records at the facility: a written job description for each position listed under 335-14-.01(7)(a)7.(iv)a. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.

Safety-Kleen failed to provide for review during the CEI written job descriptions for each position related to hazardous waste management.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv)c., the large quantity generator must maintain the following documents and records at the facility: a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 335-14-.01(7)(a)7.(iv)a.

Safety-Kleen failed to provide for review during the CEI written descriptions of the type and amount of continuing training for each position involving hazardous waste management.

(h) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv)d., the large quantity generator must maintain the following documents and records at the facility: records that document that the training or job experience, required under 335-14-3-.01(7)(a)7.(i) – (iii), has been given to, and completed by, facility personnel.

Safety-Kleen failed to provide for review during the CEI records indicating that employees were provided with hazardous waste management training.

(i) Pursuant to ADEM Admin. Code r. 335-14-3-.14(6), the large quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

Safety-Kleen failed to maintain adequate aisle space in the central hazardous waste accumulation area/10-day area.

(j) Pursuant to ADEM Admin. Code r. 335-14-3-.14(9)(e), the contingency plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems, and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and physical description of each item on the list, and a brief outline of its capabilities.

Safety-Kleen failed to indicate the location of emergency equipment in its contingency plan.

(k) Pursuant to ADEM Admin. Code r. 335-14-3-.14(10)(a), the large quantity generator must submit a copy of the contingency plan and all revisions to all local emergency responders (i.e., law enforcement agencies, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.

Safety-Kleen failed to provide for review during the CEI documentation that the contingency plan was sent to local emergency responders.

(l) Pursuant to ADEM Admin. Code r. 335-14-3-.14(10)(b), a large quantity generator must submit a quick reference guide of the contingency plan to local emergency responders identified at 335-14-3-.14(10)(a) or, as appropriate, the Local Emergency Planning Committee.

Safety-Kleen failed to provide for review during the CEI the contingency plan quick reference guide.

(m) Pursuant to ADEM Admin. Code r. 335-14-4-.05(3)(a), a transfer facility must be able to demonstrate the length of time that hazardous waste has been stored on-site.

Safety-Kleen failed to provide for review during the CEI records of the length of time hazardous waste shipments were stored in the transfer facility.

(n) Pursuant to ADEM Admin. Code r. 335-14-4-.05(3), a transfer facility may hold waste for no longer than 10 days during the normal course of transportation. A transfer facility that stores hazardous waste for more than 10 days is subject to regulation as a storage facility under Chapters 335-14-5, 335-14-6, 335-14-8, and 335-14-9. ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the “treatment”, “storage”, and “disposal” of any “hazardous waste” as identified or listed in Chapter 335-14-2.

Safety-Kleen stored hazardous waste at the transfer facility for more than ten days without a permit. Based on a review of facility records provided by Safety-Kleen on June 6, 2023, Safety-Kleen stored hazardous waste at the transfer facility for more than ten days on numerous instances between March 1, 2021, and April 6, 2023.

5. On July 14, 2023, the Department issued a Notice of Violation to Safety-Kleen, which cited a violation of the hazardous waste regulations that were discovered during the CEI.

6. On September 27, 2023, the Department received Safety-Kleen’s response to the aforementioned Notice of Violation.

7. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed

compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

(a) SERIOUSNESS OF THE VIOLATION(S): In determining the seriousness of the violations, the Department considered the general nature and magnitude of the violations along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) STANDARD OF CARE: In considering the standard of care manifested by Safety-Kleen, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Safety-Kleen failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was no significant economic benefit gained by Safety-Kleen as a result of the violations referenced herein.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION(S) UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the alleged violations.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Safety-Kleen does not have a history of similar violations.

(f) ABILITY TO PAY: The Department does not have any evidence indicating that Safety-Kleen is unable to pay the civil penalty.

(g) OTHER FACTORS: It should be noted that this Consent Order is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without

incurring the unwarranted expense of litigation (see Attachment A, which is made a part of the Department's Contentions).

8. The Department neither admits nor denies Safety-Kleen's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violation(s) cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violation(s). The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama.

SAFETY-KLEEN'S CONTENTIONS

9. Safety-Kleen neither admits nor denies the Department's Contentions. Safety-Kleen has experienced transportation delays and disruptions with scheduled shipments as a result of a shortfall in capacity at hazardous waste disposal facilities nationwide. These incidents were unplanned, without notice, and are not within the control of the facility. In instances where the facility has notice of a transporter delay, efforts are taken to obtain alternate transportation. All waste staged at the facility was inspected and managed by individuals trained in hazardous waste management. There have been no impacts to human health or the environment as a result of any transportation delays at this facility. Safety-Kleen consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Safety-Kleen, along with the Department, desires to resolve and settle the alleged violation(s) cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement. The Department believes that the following conditions are appropriate to address the violation(s) alleged herein. Therefore, the Department and Safety-Kleen agree to enter into this Consent Order with the following terms and conditions:

A. Safety-Kleen agrees to pay to the Department a civil penalty in the amount of \$29,500 in settlement of the violation(s) alleged herein within forty-five days of the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Safety-Kleen agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or other payment methods acceptable to the Department and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any payment submitted to the Department pursuant to this Consent Order shall reference Safety-Kleen's name and address, and the ADEM Administrative Order Number of this action.

C. Safety-Kleen agrees to comply with all terms, conditions, and limitations of the AHWMMA, the AEMA, and the regulations promulgated pursuant thereto immediately upon the effective date of this Order and continuing every day thereafter.

D. The Department and Safety-Kleen ("Parties") agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The Parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violation(s) cited herein.

F. Safety-Kleen agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Safety-Kleen agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Safety-Kleen also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Safety-Kleen shall be limited to the defenses of *Force Majeure*, compliance with this Agreement, and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Safety-Kleen, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Safety-Kleen) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Safety-Kleen, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement actions as may be appropriate. Safety-Kleen agrees not to object to such future orders, litigation, or enforcement actions based on the issuance of this

Consent Order if future orders, litigation, or other enforcement actions address new matters not raised in this Consent Order.

I. The Parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent shall not be appealable, and Safety-Kleen does hereby waive any hearing on the terms and conditions of this Consent Order.

J. The Parties agree that this Consent Order shall not affect Safety-Kleen's obligation to comply with any federal, State, or local laws or regulations.

K. The Parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

N. The Parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State, or local law, and shall not be construed to waive or relieve Safety-Kleen of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

SAFETY-KLEEN SYSTEMS, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Maggie Tenant
(Signature of Authorized Representative)

Lance R. LeFleur
Director

Maggie Tenant
(Printed Name)

VP Environmental Compliance
(Printed Title)

12/11/23
(Date Signed)

(Date Executed)

Attachment A

Safety-Kleen Systems, Inc.
Dolomite, Jefferson County
Facility ID No. ALD983191537

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*
Failure to inspect hazardous waste accumulation areas weekly	1	\$1,000	\$500	\$0
Failure to mark or label hazardous waste containers with the words "Hazardous Waste"	1	\$200	\$100	\$0
Failure to mark or label hazardous waste containers with an indication of the hazards	1	\$200	\$100	\$0
Failure to mark or label hazardous waste containers with an accumulation start date	1	\$200	\$100	\$0
Failure to provide for review job titles and employee names for each position related to hazardous waste management	1	\$100	\$50	\$0
Failure to provide for review written job descriptions for each position related to hazardous waste management	1	\$100	\$50	\$0
Failure to provide for review written descriptions of the type and amount of continuing training for each position involving hazardous waste management	1	\$100	\$50	\$0

Failure to provide for review records indicating that employees were provided with hazardous waste management training	1	\$100	\$50	\$0	
Failure to maintain adequate aisle space	1	\$200	\$100	\$0	
Failure to indicate the location of emergency equipment in the contingency plan	1	\$100	\$50	\$0	
Failure to provide for review documentation that the contingency plan was sent to local emergency responders	1	\$100	\$50	\$0	
Failure to provide for review the contingency plan quick reference guide	1	\$100	\$50	\$0	
Failure to provide for review records of the length of time hazardous waste shipments were stored in the transfer facility	1	\$500	\$250	\$0	
Storage of hazardous waste at a transfer facility for more than 10 days without a permit	1	\$20,000	\$5,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$23,000	\$6,500	\$0	\$29,500

Adjustments to Amount of Initial Penalty

Economic Benefit (+)	\$0
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0

Amount of Initial Penalty	\$29,500
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$29,500

Footnotes

* See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.