

1230-08

ENTERED



STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT  
DEPARTMENT,  
Complainant,

v.

SAFETY-KLEEN SYSTEMS, INC.,  
ALBUQUERQUE SERVICE CENTER  
Respondent.

NO. HWB-08-45 (CO)

**COPY**

**SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER**

This Settlement Agreement and Stipulated Final Order ("Final Order") is entered into between the New Mexico Environment Department (the "Department") and the Respondent, the Safety-Kleen Systems, Inc., Albuquerque Service Center ("Safety-Kleen") (collectively, the "Parties"). The Parties enter into this Final Order to resolve alleged statutory, regulatory, and permit violations by Safety-Kleen, EPA identification No. NM000804294. The Department alleges violations of the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-4-1 to 74-4-14; the Hazardous Waste Management Regulations ("HWMR"), 20.4.1 NMAC, issued thereunder; and Safety-Kleen's Hazardous Waste Facility Permit.

**I. BACKGROUND**

**A. PARTIES**

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-6(B)(3) (1991). The Department is authorized to administer and enforce the HWA and the HWMR, including assessing civil penalties for violations thereof.

2. The Respondent Safety-Kleen is a corporation doing business in New Mexico at 2720 Girard Northeast in Albuquerque, New Mexico 87107. Safety-Kleen is engaged in the hazardous waste management business.

## **B. HISTORY**

3. On January 29, 1992, the Department issued Hazardous Waste Facility Permit No. NM000804294 (the "Operating Permit") to Safety-Kleen for the storage of hazardous wastes, pursuant to section 74-4-4(A)(6) of the HWA. The Operating Permit has been modified several times and was reissued on September 26, 2003. The Operating Permit is still in effect.

4. Safety-Kleen is a large quantity generator and transporter of hazardous waste. Safety-Kleen operates as 10-day transfer facility and as a one-year storage facility.

5. On February 8, 2008, the Department conducted a hazardous waste compliance evaluation inspection at Safety-Kleen. During the inspection, the Department's inspectors observed several potential violations of the HWA, the HWMR, and the Operating Permit.

6. On November 4, 2008, the Department sent to Safety-Kleen a Notice of Violation letter ("NOV") alleging several violations of the HWA, the HWMR, and the Operating Permit as noted during the February 8, 2008 inspection.

7. On November 4, 2008, the Department sent to Safety-Kleen a letter proposing a civil penalty for the alleged violations.

8. On December 9, 2008, the Parties communicated via telephone to reach a settlement of the Department's claims for civil penalties for the alleged violations.

## **II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATION**

9. Safety-Kleen does not admit any of the allegations in the NOV. However, to avoid litigation, the Department and Safety-Kleen propose the settlement in this Final Order to resolve

the alleged violations in the NOV. The Department and Safety-Kleen agree to this Final Order for the sole purpose of resolving the alleged violations in the NOV, and any other violations that could have been alleged in the NOV based upon information in the possession of the Department at the time it issued the NOV.

10. In compromise and settlement of the alleged violations set forth in the NOV and upon consideration of the seriousness of the violations and good faith efforts to comply, the Parties agree that Safety-Kleen shall pay a civil penalty \$14,000.00 to the State of New Mexico within thirty (30) calendar days after the effective date of this Final Order.

11. Payment shall be made to the *State of New Mexico* by certified check, bank draft, company check, or other guaranteed negotiable instrument and mailed or hand-delivered to the following address:

New Mexico Environment Department  
Hazardous Waste Bureau  
c/o Mr. James Bearzi, Bureau Chief  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-2567

A copy of the transmittal letter shall be sent to Tracy Hughes, General Counsel for the Department.

12. If Safety-Kleen fails to make timely and complete payment of the civil penalty, Safety-Kleen shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

### **III. OTHER TERMS AND CONDITIONS**

#### **A. RESERVATION OF RIGHTS AND DEFENSES**

13. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring Safety-Kleen to comply with any applicable state or federal

requirement. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the HWA for violation of any state or federal requirement applicable to Safety-Kleen not resolved herein. This Final Order shall not be construed to prohibit or limit in any way Safety-Kleen from raising any defense to a Department action seeking such relief.

**B. MUTUAL RELEASE**

14. The Parties mutually release each other from all claims that each Party raised or could have raised against the other regarding the facts and violations alleged in the NOV. Such release applies only to civil liability.

**C. WAIVER OF STATE LIABILITY**

15. Safety-Kleen shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for Safety-Kleen's performance of any obligation under this Final Order.

**D. EFFECTIVE DATE AND TERMINATION DATES**

16. This Final Order shall become effective on the date it has been signed by the Department Secretary.

17. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when Safety-Kleen has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 13 and 14 shall not terminate, and shall remain in effect as an agreement between the Parties.

**E. INTEGRATION**

18. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order, contains the entire agreement between the Parties, and shall not be modified without the express written agreement of the Parties.

**F. BINDING EFFECT**

19. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.


**G. AUTHORITY OF SIGNATORIES**

20. The person executing this Final Order on behalf of Safety-Kleen represents that he or she has the authority to execute this Final Order on behalf of Safety-Kleen.

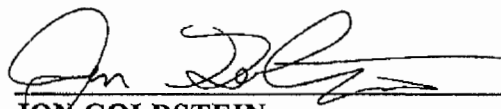
**For the NEW MEXICO ENVIRONMENT DEPARTMENT:**

By:  Date: 12/18/08  
**MARCY LEAVITT**  
**DIRECTOR**  
**WATER AND WASTE MANAGEMENT DIVISION**

**For Respondent SAFETY-KLEEN SYSTEMS, INC.:**

By:  Date: 12-16-08  
**VIRGIL W. DUFFIE, III**  
**ASSISTANT SECRETARY**

Pursuant to section 20.1.5.600.B(2) NMAC, this Settlement Agreement and Stipulated Final Order, agreed to by the Department and the Respondent Safety-Kleen, is hereby **APPROVED** as a **FINAL ORDER**.

  
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**JON GOLDSTEIN**  
**DEPUTY SECRETARY OF ENVIRONMENT**

Date: 12-30-08

CHECK NO: 10580980

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PressureSaver Patent 4,918,128 - OCT05

Invoice Number	Invoice Date	Document Number Text	Gross Amount	Discount	Net Amount
121608	12/16/2008	1900758772 - BL	14,000.00	0.00	14,000.00
		<b>Check Total .....</b>			<b>\$ 14,000.00</b>
<b>VENDOR:</b>	126429	STATE OF NEW MEXICO ENVIRONMENT DEP			



**Safety-Kleen Systems, Inc**

5360 Legacy Drive  
Building 2, Suite 100  
Plano, TX 75024

JP Morgan Chase Bank N.A

Chicago, Illinois

70-2322

719

0941591

10580980

DATE 12/19/2008

\$ \*\*\*\*\*14,000.00

VOID AFTER 90 DAYS

PAY FOURTEEN THOUSAND DOLLARS  
TO THE ORDER OF STATE OF NEW MEXICO ENVIRONMENT DEPT.  
2905 RODEO PARK DR E BUILDING 1  
HAZARDOUS WASTE BUREAU  
SANTA FE NM 87505-2567

*Paul Lee*  
Authorized Signature  
*Dennis Mcguel*  
Authorized Signature

⑈ 10580980⑈ ⑆ 071923226⑆ 0941591⑈



**Safety-Kleen**  
Accounts Payable  
PO Box 250389  
Plano, TX 75025-0389  
Phone : 972-265-2400

STATE OF NEW MEXICO ENVIRONMENT DEPT.  
2905 RODEO PARK DR E BUILDING 1  
HAZARDOUS WASTE BUREAU  
SANTA FE NM 87505-2567

SEE REVERSE SIDE FOR  
OPENING INSTRUCTIONS

ENCLOSURE INSTRUCTIONS  
SEE REVERSE SIDE