



Certified Mail - Return Receipt Requested

February 8, 2022

Ms. Pamela K. Harvey
Environmental, Health & Safety Manager
Safety-Kleen Systems, Inc.
610 131st Place,
Hammond, IN 46327

**RE: DISAPPROVAL
2020 FINANCIAL ASSURANCE PACKAGE
ANNUAL INFLATION POLICY INCREASE FOR CLOSURE POLICY PEC000659417
SAFETY-KLEEN SYSTEMS, INC. - ALBUQUERQUE FACILITIES
BERNALILLO COUNTY, ALBUQUERQUE, NEW MEXICO
EPA ID #NMD000804294
HWB-SKAL-MISC**

Dear Ms. Harvey:

The New Mexico Environment Department (NMED) has completed its review of Safety-Kleen Systems, Inc. (the Permittee) *2020 Financial Assurance* package dated September 11, 2020 and received September 16, 2020, the Albuquerque cost estimate received via e-mail on October 22, 2020, and the *Annual Inflation Policy Increase for Closure Policy PEC000659417* dated February 25, 2021 and received February 26, 2021. NMED hereby issues this Disapproval with the following comments that apply to 2022 Albuquerque Service Center financial assurance submittal.

COST ESTIMATES

Comment 1

Table 1 (Closure Cost Estimate Worksheet) from the Albuquerque Cost Estimate reports some values that are calculated and some values that are inputted to the spreadsheet without explanation. For example, Activity 2 (Underground Storage Tank Decontamination and Removal), category *Subcontractor Costs*, line-items 2 (Tank Purging with Dry Ice) through 4 (Asphalt Paving), define the activity costs as "Lump Sums." However, the Permittee did not define or explain how the lump sums were determined in the *Notes* section of the table. Define and explain how these lump sums are determined and include these definitions in the *Notes* section of the table. In

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future cost estimates, all costs that are inputted must be defined in the *Notes* section of the table(s).

Comment 2

There is a typographical error in Table 1, under Activity 6, category *Assumptions*, line-items 239 (Underground Storage Tank Decontamination and Removal) through 243 (PPE, Consumables, Debris), under the column labeled *Number of Drums*. The values are reported with dollar signs but the Permittee is using these values to calculate the total number of drums required for each activity listed. Correct the table and ensure all units are correct prior to submitting the cost estimate tables for the 2022 Financial Assurance package.

Comment 3

Table 1, Activity 6, line-item 245 (Purchase 55-gallon drums to containerize wash water) has a subtotal reported as \$3,743. The subtotal is calculated by multiplying the rate per drum (\$83/drum) by the total number of drums times a value of 1.1 (\$83/drum X 41 drums X 1.1). However, it is unclear why the rate per drum and total number of drums are being multiplied by 1.1. Define the value (1.1) and explain why it was used to calculate the subtotal. Include the definition in the *Notes* section of the worksheet.

Comment 4

The cost estimate for the Albuquerque Facility was not included with the 2020 Financial Assurance package. NMED sent an e-mail to the Permittee on October 22, 2020 requesting the cost estimate. All future financial assurance packages must include cost estimates. Not including cost estimates delays the review. In addition, the cost estimate for the Albuquerque Facility was provided as an excel spreadsheet. To expedite and facilitate NMED's review, the Permittee must continue to provide excel spreadsheets with the pdf copies of the cost estimates for all future submittals (see Comment 1).

Comment 5

There were incomplete effective dates and policy numbers in the policies that caused confusion during the financial assurance review. The Permittee has since provided NMED with incomplete information with the July 17, 2020 *Direction to Modify* letter. Below are examples of incomplete effective dates and missing policy numbers:

- a. February 27, 2020 *original Certificate of Insurance for Closure or Post-Closure Care* issued under Indian Harbor Insurance Company (Policy No. PEC0055302xx) has an effective date of March 1, 2020 but did not provide an end date.

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- b. The July 29, 2020 *New Insurance Policy for Financial Assurance* letter received via e-mail on August 20, 2020 informed NMED of a change in Insurance Provider and policy number. However, it did not provide the policy number under the previous insurer but did provide the expiration date of July 31, 2020. The previous insurer was identified as Indian Harbor Insurance Company and the new Insurer was identified as Great American Insurance Company. The new policy number is identified as CPC E60110100 with an effective date from July 31, 2020 through July 31, 2021.

In the future, when stating insurers and policy numbers, complete effective dates (e.g., start and end dates) and complete policy numbers from old to new insurance policies must be provided to avoid review delays.

FINANCIAL ASSURANCE MECHANISM

Comment 6

Page 2 of the September 2020 *Certificate of Insurance for Closure or Post-Closure Care* wording does not match verbatim the wording specified in 40 CFR 264.151(e) as required by EPA. The Permittee included additional language. For example, the first sentence of Paragraph 1 of the *Certificate of Insurance* states, “[t]he Insurer hereby certifies that it has issued to the insured the policy of insurance identified above to provide financial assurance for closure and corrective action.” The Permittee included the language “corrective action” to the wording of the instrument which specifically states, “*closure or closure and post-closure care or post-closure care.*” Additional language or explanations must only be provided in the cover letter for the financial assurance package, not the wording of the mechanism. The exact wording from 40 CFR 264.151(e) must be used for the 2022 *Certificate of Insurance for Closure or Post-Closure Care* and all future submittals. Additional language, statements, and explanations must be included in the cover letter. If the language of the mechanism is modified, then the submittal will be disapproved, and the Permittee will be required to revise and resubmit the financial assurance package.

Comment 7

The Permittee’s response to Comment 2 from NMED’s July 17, 2020 *Direction to Modify* states that “[t]he Safety-Kleen Albuquerque and Farmington facilities do not meet the definitions for facilities under 40 CFR 264.147(b)(1)(i) and thus are not required to provide coverage for non-sudden accidental occurrences.” NMED concurs that the current 2020 Permits do not require non-sudden liability coverage; therefore, the Permittee will not be required to provide coverage for non-sudden accidental occurrences.

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Comment 8

The Permittee's response to Comment 2 from NMED's July 17, 2020 *Direction to Modify* included an attachment titled, *Attachment Comment 2 Signed Duplicate Original of Pollution Remediation Legal Liability Policy* for policy number PEC004203906. This is first time NMED has received this specific policy from the Permittee and it is not clear if the *Pollution Remediation Legal Liability Policy* is part of the Certificate of Liability for both locations or if it only applies to one facility. Since the Farmington facility is undergoing closure, NMED assumes that the *Pollution Remediation Legal Liability Policy* is for the Albuquerque Service Center. In addition, the *Pollution Remediation Legal Liability Policy* was included with the policy PRE E60323500 (effective period beginning November 1, 2020, through November 1, 2021). An updated *Pollution Remediation Legal Liability Policy* must be provided with the 2022 submittal.

Comment 9

Although the Permittee provided the revised *Hazardous Waste Facility Liability Certificates of Insurance* letters for the Albuquerque and Farmington facilities as required by Comment 1 of the July 17, 2020 *Direction to Modify*, the language is still not identical to the wording in 40 CFR 264.151(j). For example, the Permittee omitted "40 CFR 264.147 or 265.147" and replaced the regulatory reference with "the New Mexico Hazardous Waste Management Regulations, Section 20.40.1.500" in Paragraph 1, Paragraph 2(b), and the certification statement. Furthermore, the certification statement references the wrong section, "40 CFR 265.151(j)" and added the language "incorporating by reference." Correct the section error and remove the added language in the 2022 financial assurance submittal. All future financial assurance submittals must follow verbatim the wording of the instruments in 40 CFR 264.151.

The Permittee must address all of the comments from this Disapproval for the 2022 Financial Assurance submittal.

Should you have any questions, please contact Leona Tsinnajinnie of my staff at (505) 690-7820.

Sincerely,

Rick Shean

Digitally signed by Rick
Shean
Date: 2022.02.08 13:07:35
-07'00'

Rick Shean
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
L. Tsinnajinnie, NMED HWB

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C. Amindyas, NMED HWB
L. King, EPA Region 6 (GLCRRC)

File: TWP 2021 and Reading File
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