

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF

Safety-Kleen Inc.  
a Corporation.

Respondent.

CWA SECTION 311 CLASS II  
CONSENT AGREEMENT  
AND FINAL ORDER

Docket No. OPA-09-2015-0001

**STATUTORY AUTHORITY**

This Consent Agreement and Final Order ("CAFO") is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(A) and (B)(ii) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. § 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX, who has in turn delegated them to the Director, Enforcement Division of EPA Region IX ("Complainant").

**CONSENT AGREEMENT**

**I. Stipulations**

Safety-Kleen, Inc. (hereafter "SKS" or "Respondent"), for the purpose of this CAFO, admits to the following jurisdictional allegations:

1. SKS is a corporation, and is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

2. Respondent owns and operates the waste oil collection and re-refining facility at 6880 Smith Avenue, in Newark, California (the "Facility"). The Facility includes several large, above ground oil storage tanks, along with several smaller tanks, and has a maximum above-ground oil storage capacity of an approximate 1,300,000 gallons. Each of the larger individual tanks have a capacity of more than 42,000 gallons. Immediately adjacent to the Facility and connected by a drainage channels and culverts are commercial salt ponds, the Don Edwards National Wildlife Refuge and San Francisco Bay. Respondent is the owner or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2. The Facility is an "onshore facility" as defined at 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

3. San Francisco Bay is a navigable water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and is within the jurisdiction of Section 311 of the CWA.

4. Waste oils at the Facility are oils within the definition stated at Section 311(a)(1), 33 U.S.C. § 1321(a)(1).

5. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges . . . ."

6. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(5)

authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

7. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112 (“the Oil Pollution Prevention regulations”), pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, which set forth certain procedures, methods and requirements applicable to the operator of the Facility if, due to its location, the Facility reasonably could be expected to discharge oil into or on navigable waters and their adjoining shorelines in such quantities as EPA has determined in 40 C.F.R. Part 110 may be harmful to the public health or welfare or the environment of the United States.

8. The Facility is a non-transportation-related onshore facility that, due to its location, reasonably could be expected to discharge oil to navigable waters or adjoining shorelines in a harmful quantity.

9. The Facility has a total oil storage capacity of greater than or equal to one million gallons. The distance from the Facility to the Don Edwards National Wildlife Refuge and San Francisco Bay is such that a discharge of substantial amounts of oil from the Facility could, under certain circumstances, cause injury to fish and wildlife and sensitive environments.

10. On January 27, 2014, EPA conducted an inspection of the Facility to determine Respondent’s compliance with the Oil Pollution Prevention regulations, which include requirements for Spill Prevention, Countermeasure and Control (“SPCC”) planning and Facility Response Plans (“FRP.”)

## **II. Allegations**

EPA alleges, and Respondent neither admits nor denies, but agrees for the purpose of this proceeding not to contest, that:

11. As of January 27, 2014, Respondent had failed to comply with the applicable SPCC requirements of the Oil Pollution Prevention regulations, specifically in: failing to provide for secondary containment around an oil storage area that is sufficient to contain the contents of the single largest tank plus sufficient freeboard to allow for precipitation, as required at 40 C.F.R. § 112.7(c); failing to provide secure and controlled access to oil handling, processing and storage areas, including loading/unloading connections, as required at 40 C.F.R. § 112.7(g); and failing to provide for all containers to be engineered or updated in accordance with good engineering practices to avoid discharges, which may include liquid level alarms, as required at 40 C.F.R. § 112.8(c)(8). On information and belief, Respondent has violated these requirements for each day during the period from November 2013 through April 2014.

12. As of January 27, 2014, Respondent also had failed to comply with the applicable FRP requirements of the Oil Pollution Prevention regulations, specifically in failing to provide a complete FRP, as required by 40 C.F.R. § 112.20. On information and belief, Respondent has violated these requirements for each day during the period from November 2013 through April 2014.

### **III. Waiver of Rights**

13. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

### **IV. Penalty and Payment Terms**

14. Consistent with 33 U.S.C. § 1321(b)(6)(B)(ii), EPA calculated a Class II penalty of \$90,000.00 against Respondent for the failure to comply with the Oil Pollution Prevention regulations.

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

15. The Respondent shall pay by cashier's check, certified check or electronic funds transfer ("EFT") the total amount of \$90,000.00 payable to the "Environmental Protection Agency," with the notation "OSLTF - 311" and the docket number of this CAFO. Payment by check shall be addressed to:

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

If paying by EFT, the Respondent shall transfer \$90,000.00 to:

Federal Reserve Bank of NY  
ABA 021030004  
Account 68010727  
33 Liberty Street  
New York, N.Y. 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency."

16. Respondent shall submit copies of the payment by certified mail or private delivery service postmarked within thirty (30) days after the Effective Date of the Final Order to the following persons:

Steven Armsey  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street (ORC-1)  
San Francisco, California 94105

and to:

Peter Reich  
U.S. Environmental Protection Agency

Region IX (ENF 8-2)  
75 Hawthorne Street  
San Francisco, California 94105

17. Respondent's failure to pay the penalty assessed by the Final Order in full within the time provided in Paragraph 15 may subject Respondent to a civil action to collect the assessed penalties, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty and of this CAFO shall not be subject to review.

#### **V. General Provisions**

18. The Effective Date of this Consent Agreement is the date that the Final Order is signed by the EPA Regional Judicial Officer.

19. Pursuant to 40 C.F.R. § 22.45(b), prior to entry of this CAFO, Complainant must notify the public and provide no less than forty (40) days for public comment. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within fifteen (15) days of receipt of a commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

20. The provisions of the Final Order shall be binding on Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns. No change in ownership or corporate or legal status of Respondent in regard to the Facility shall in any way alter Respondent's obligations and responsibilities under this Consent Agreement.

21. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's civil liability for the violations and facts alleged in this Consent Agreement.

22. The undersigned representative of Respondent hereby certifies that he is authorized to execute this Consent Agreement on behalf of Respondent and to legally bind Respondent to the terms and conditions set forth herein.

23. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

For Respondent, Safety-Kleen, Inc.:

*Nudrae Ashley*

Date: 7/8/2015

U.S. ENVIRONMENTAL PROTECTION AGENCY

*KJ for 15J*  
Kathleen Johnson, Director  
Enforcement Division, Region 9  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Date: 8/5/2015