



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

October 20, 2021

VIA ELECTRONIC MAIL:

Safety-Kleen Systems, Inc.
c/o Alan McKim, President
Clean Harbors, Inc.
42 Longwater Drive
Norwell, MA 02061
Alan.mckim@cleanharbors.com

Re: Adoption of Agreed Order
Commissioner, Indiana Department of
Environmental Management
v.
Safety Kleen Systems, Inc.
Plant ID No. 089-00301
Case Nos. 2018-25282-A
2021-27677-A
2021-27834-A
East Chicago, Lake County

Dear Mr. McKim:

This is to inform you that the Agreed Order in the above-referenced case has been approved and adopted by the Indiana Department of Environmental Management. A copy of the Agreed Order is enclosed.

Please note the terms of compliance contained in the Agreed Order. The time frames for compliance are effective upon your receipt of this correspondence. Please note that the civil penalty is due within thirty (30) days after the effective date of the Agreed Order. Payment should be made payable to the Environmental Management Special Fund and sent to:

Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room 1340
100 North Senate Avenue
Indianapolis, IN 46204

Please include the Case Number on the front of the check. If you have any questions, please contact Jennifer Bailey at (317) 234-3996 or jbailey2@idem.in.gov.

Sincerely,



David McIver, Section Chief
Compliance and Enforcement Branch
Office of Air Quality

Enclosure

cc: Nick Vertin, Refinery Manager, Safety Kleen Systems, Inc.
(Vertin,nicholas.vertin@safety-kleen.com)
Timmerly Fitzpatrick, In House Counsel, Clean Harbors, Inc.
(fitzpatrick.timmerly@cleanharbors.com)
Tony Sullivan, Barnes & Thornburg (Tony.Sullivan@btlaw.com)
Lake County Health Department
Jennifer Bailey, Compliance and Enforcement Branch, Office of Air Quality
Sasa Dunovic, Compliance and Enforcement Branch, Office of Air Quality
Marty Yeates, Compliance and Enforcement Branch, Office of Air Quality
Betsy Zlatos, IDEM Office of Legal Counsel



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STATE OF INDIANA)	SS: BEFORE THE INDIANA DEPARTMENT OF
)	
COUNTY OF MARION)	ENVIRONMENTAL MANAGEMENT
COMMISSIONER OF THE DEPARTMENT)	
OF ENVIRONMENTAL MANAGEMENT,)	
)	
Complainant,)	
)	
v.)	Case Nos. 2018-25282-A
)	2021-27677-A
SAFETY-KLEEN SYSTEMS, INC.,)	2021-27834-A
)	
Respondent.)	

AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to Indiana Code ("IC") 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

I. FINDINGS OF FACT

1. Complainant is the Commissioner ("Complainant") of the Indiana Department of Environmental Management ("IDEM"), a department of the State of Indiana created by IC 13-13-1-1.
2. Respondent is Safety-Kleen Systems, Inc., which owns and operates a stationary oil re-refinery with Plant I.D. No. 089-00301 located at 601 Riley Road in East Chicago, Lake County, Indiana ("Site").
3. IDEM has jurisdiction over the parties and the subject matter of this action.
4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation ("NOV") identifying the violations listed in Findings of Fact paragraphs 5a through 5g on January 11, 2021 via Certified and Electronic Mail to:

Safety-Kleen Systems, Inc.
c/o Alan McKim, President
Clean Harbors, Inc.
42 Longwater Drive
Norwell, MA 02061

CT Corporation System,
Registered Agent
Safety-Kleen Systems, Inc.
334 N. Senate Avenue
Indianapolis, IN 46204
CTSOPReceipt@wolterskluwer.com

By letter dated August 9, 2021, Respondent waived issuance of a NOV and the settlement period of sixty (60) days, as provided for by IC 13-30-3-3, for the violations identified in Findings of Fact paragraphs 5h through 5k as described in the Enforcement Action Letters issued to Respondent on February 7, 2021 and April 29, 2021.

5. During an investigation including report reviews and inspections which occurred on April 18, 2018 and April 23, 2021 conducted by a representative of IDEM, the following violations were found:

Based on the Notice of Violation issued to the Respondent on January 11, 2021, Case No. 2018-25282-A contains the following violations:

- a. Pursuant to Part 70 Operating Permit No. 089-33919-00301 ("Permit 33919"), Condition D.1.1(b)(3) and 326 IAC 7-4.1-16(2), the combined sulfur dioxide ("SO₂") emissions from Process Heaters H-201 and H-301 shall not exceed fourteen (14) pounds per hour and sixty (60) tons per twelve (12) consecutive month period.

Respondent exceeded the combined SO₂ emission limit from Process Heaters H-201 and H-301 of fourteen (14) pounds per hour eighty-three (83) times from April 1, 2015 to March 31, 2018, in violation of Permit 33919, Condition D.1.1(b)(3) and 326 IAC 7-4.1-16(2).

- b. Pursuant to Permit 33919, Condition D.1.1(c)(3) and 326 IAC 7-4.1-16(3), the combined SO₂ emissions from Process Heaters H-401 and H-402 shall not exceed ten and eight-tenths (10.8) pounds per hour and forty-seven and three-tenths (47.3) tons per twelve (12) consecutive month period.

Respondent exceeded the combined SO₂ emission limit from Process Heaters H-401 and H-402 of ten and eight-tenths (10.8) pounds per hour forty-eight (48) times from July 1, 2015 to June 30, 2018, in violation of Permit 33919, Condition D.1.1(c)(3) and 326 IAC 7-4.1-16(3).

- c. Pursuant to 326 IAC 7-4.1-16(5) and Permit 33919 Condition D.1.5(b)(2) and the corresponding condition in subsequent permits, except for monitoring system malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments) the Permittee shall monitor

continuously (or collect data at all required intervals) any time a source of emissions is operating.

Respondent experienced significant downtime for the analyzer connected to the supply line from V-410 from January 1, 2016 to June 30, 2021, in violation of 326 IAC 7-4.1-16(5) and Permit 33919 Condition D.1.5(b)(2) and the corresponding condition in subsequent permits.

- d. Pursuant to 326 IAC 7-4.1-16(5) and Permit 33919 Condition D.1.5(b)(2) and the corresponding condition in subsequent permits, Except for monitoring system malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments) the Permittee shall monitor continuously (or collect data at all required intervals) any time a source of emissions is operating.

Respondent experienced significant downtime for the analyzer connected to the supply line from V-307 from January 1, 2016 to June 30, 2021, in violation of 326 IAC 7-4.1-16(5) and Permit 33919 Condition D.1.5(b)(2) and the corresponding condition in subsequent permits.

- e. Pursuant to Permit 33919, Condition D.1.5(a)(5), Respondent shall submit an excess emissions report to the department not later than thirty (30) days after the end of each calendar quarter.

Respondent failed to report the one hour combined sulfur dioxide emission limit exceedances from Process Heaters H-201, H-301, H-401, and H-402 from July 1, 2015 to June 30, 2018, in violation of Permit 33919, Condition D.1.5(a)(5).

- f. Pursuant to Permit 33919, Condition C.18(a), the Respondent shall submit the Quarterly Deviation and Compliance Monitoring Report which identifies any deviation from permit requirements, the date(s) of each deviation, the cause of the deviation, and the response steps taken must be reported.

Respondent failed to report the one hour combined sulfur dioxide emission limit exceedances from Process Heaters H-201, H-301, H-401, and H-402 from July 1, 2015 to June 30, 2018, in violation of Permit 33919, Condition C.18(a).

- g. Pursuant to Permit 33919, Condition D.1.5(c)(3), the Respondent shall submit a report to IDEM not later than thirty (30) days after the end of each calendar quarter which identifies beginning and end dates and time of the monitor system malfunction; and the corrective actions taken; and the manual sampling data substituted.

Respondent failed to submit monitor downtime reports that identified beginning and end dates and time of the monitor system malfunction; and the corrective actions taken; and the manual sampling data substituted from September 30, 2016 to December 31, 2018 for Antec P6200S Analyzers V-307 and V-410, in violation of Permit 33919, Condition D.1.5(c)(3).

Based on the Enforcement Action Letter issued to the Respondent on February 7, 2021, Case No. 2021-27677-A contains the following violations:

- h. Pursuant to Part 70 Operating Permit No. 089-40580-00301 ("Permit 40580"), Condition D.1.1(b)(3) and 326 IAC 7-4.1-16(2), the combined SO₂ emissions from Process Heaters H-201 and H-301 shall not exceed fourteen (14) pounds per hour and sixty (60) tons per twelve (12) consecutive month period.

Respondent exceeded the combined SO₂ emission limit from Process Heaters H-201 and H-301 of fourteen (14) pounds per hour on December 9, 2020 for one (1) hour, in violation of Permit 40580, Condition D.1.1(b)(3) and 326 IAC 7-4.1-16(2).

- i. Pursuant to Permit 40580, Condition D.1.1(c)(3) and 326 IAC 7-4.1-16(3), the combined SO₂ emissions from Process Heaters H-401 and H-402 shall not exceed ten and eight-tenths (10.8) pounds per hour and forty-seven and three-tenths (47.3) tons per twelve (12) consecutive month period.

Respondent exceeded the combined SO₂ emission limit from Process Heaters H-401 and H-402 of ten and eight-tenths (10.8) pounds per hour on December 9, 2020 for one (1) hour, in violation of Permit 40580, Condition D.1.1(c)(3) and 326 IAC 7-4.1-16(3).

Based on the Enforcement Action Letter issued to the Respondent on April 29, 2021, Case No. 2021-27834-A contains the following violations:

- j. Pursuant to Permit 40580, Condition D.1.1(c)(3) and 326 IAC 7-4.1-16(3), the combined SO₂ emissions from Process Heaters H-401 and H-402 shall not exceed ten and eight-tenths (10.8) pounds per hour and forty-seven and three-tenths (47.3) tons per twelve (12) consecutive month period.

Respondent exceeded the combined SO₂ emission limit from Process Heaters H-401 and H-402 of ten and eight-tenths (10.8) pounds per hour on January 13, 2021 for one (1) hour, in violation of Permit 40580, Condition D.1.1(c)(3) and 326 IAC 7-4.1-16(3).

- k. Pursuant to Part Permit 40580, Condition B.9, Respondent shall annually submit a compliance certification report which addresses the status of the

source's compliance with the terms and conditions contained in this permit, including emission limitations, standards, or work practices. All certifications shall cover the time period from January 1 to December 31 of the previous year and shall be submitted no later than April 15 of the following year.

Respondent failed to submit the Annual Compliance Certification report which covered the time period from January 1 to December 31, 2020, by no later than April 15, 2021, in violation of Permit 40580, Condition B.9.

6. Respondent submitted a request for a SIP revision and a petition for a variance pursuant to IC 13-14-8-8 for the requirement to operate an SO₂ CEMS on the stack for H-406 as required by 326 IAC 7-4.1-16(5)(B) on October 1, 2021.
7. Orders of the Commissioner are subject to administrative review by the Office of Environmental Adjudication under IC 4-21.5; however, in recognition of the settlement reached, Respondent acknowledges notice of this right and waives any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective ("Effective Date") when it is approved by Complainant or Complainant's delegate and has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondent shall comply with Part 70 Operating Permit No. 089-44185-00301 until superseded by a permit modification.

Respondent shall comply with 326 IAC 7-4.1-16 (5)(A) until installation and certification of the two (2) SO₂ Continuous Emission Monitoring Systems (CEMS) pursuant to Order Paragraph 4 and until a variance has been granted as described in Findings of Fact Paragraph 6 from the requirement to operate an SO₂ CEMS on the stack for H-406 as required by 326 IAC 7-4.1-16(5)(B).

3. No later than May 30, 2022, Respondent shall complete the installation and certification of the two (2) SO₂ Continuous Emission Monitoring Systems on the stacks for process heaters H-201 and H-401.
4. Respondent shall operate and comply with 326 IAC 3-5 upon installation and certification of the two (2) SO₂ CEMS on the stacks for process heaters H-201 and H-401.
5. Within thirty (30) days of the Effective Date, Respondent shall submit a permit modification application for the installation of the two (2) SO₂ CEMS on the stacks for process heaters H-201 and H-401, which will replace the requirements for the existing SO₂ analyzers upon the approval of the variance identified in Findings of Fact paragraph 6.

6. Within thirty (30) days of the effective date of this Agreed Order, Respondent shall submit a progress report on the fifteenth (15th) day of every month to verify the status of the SO₂ CEMS installation project with the final report being due fifteen (15) days after the completion of all testing and certifications for the SO₂ CEMS.
7. All submittals required by this Agreed Order, unless IDEM notifies the Respondent otherwise in writing, shall be sent to:

Jennifer Bailey, Senior Enforcement Case Manager
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251
Jbailey2@idem.in.gov

8. Pursuant to IC 13-30-4-1, Respondent is assessed and agrees to pay a civil penalty of Two Hundred Thirty-Two Thousand Five Hundred Dollars (\$232,500.00). Said penalty amount shall be due and payable to the Environmental Management Special Fund within thirty (30) days of the Effective Date; the thirtieth day being the "Due Date."
9. In the event the terms and conditions of the following paragraphs are violated, Complainant may assess, and Respondent shall pay stipulated penalties in the following amounts:

<u>Paragraph</u>	<u>Violation</u>	<u>Stipulated Penalty</u>
3	Failure to complete the SO ₂ CEMS installation.	\$1000 per week after May 30, 2022
5	Failure to submit permit application within 30 days of the Effective Date.	\$500 per week
6	Failure to submit progress reports on the 15th day of every month during the SO ₂ CEMS installation.	\$250 per week per missed report

10. Stipulated penalties shall be due and payable no later than the thirtieth day after Respondent receives written notice that Complainant has determined a stipulated penalty is due; the thirtieth day being the "Due Date." Complainant may notify Respondent at any time that a stipulated penalty is due. Failure to notify Respondent in writing in a timely manner of a stipulated penalty assessment shall not waive Complainant's right to collect such stipulated penalty or preclude Complainant from seeking additional relief against Respondent for violation of

this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude Complainant from seeking additional relief against Respondent for a violation of this Agreed Order; such additional relief includes any remedies or sanctions available pursuant to Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.

11. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number of this action and shall be mailed to:

Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room 1340
100 North Senate Avenue
Indianapolis, IN 46204

12. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1. The interest shall be computed as having accrued from the Due Date until the date that Respondent pays any unpaid balance. Such interest shall be payable to the Environmental Management Special Fund and shall be payable to IDEM in the manner specified in Paragraph 11, above.
13. Force Majeure, for purposes of this Agreed Order, is defined as any event arising from causes totally beyond the control and without fault of Respondent that delays or prevents the performance of any obligation under this Agreed Order despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force Majeure does not include financial inability to complete the work required by this Agreed Order or increases in costs to perform the work.
14. Respondent shall notify IDEM by calling the case manager within three (3) calendar days and by writing no later than seven (7) calendar days after it has knowledge of any event which Respondent contends is a force majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by the Respondent to minimize the delay, and the timetable by which these measures will be implemented. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event. Respondent shall have the burden of demonstrating that the event is a force majeure. The decision of whether an event is a force majeure shall be made by IDEM.

15. If a delay is attributable to a force majeure, IDEM shall extend, in writing, the time period for performance under this Agreed Order, by the amount of time that is directly attributable to the event constituting the force majeure.
16. Signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent.
17. This Agreed Order shall apply to and be binding upon Respondent and all successors and assigns. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners, successors, or assigns before ownership rights are transferred.
18. No change in ownership, corporate, or partnership status of Respondent shall in any way alter the Respondent's status or responsibilities under this Agreed Order.
19. Respondent shall ensure that all contractors, firms, and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
20. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
21. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of the obligation to comply with the requirements of any applicable permits or any applicable Federal or State laws or regulations.
22. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
23. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the violation specified in the NOV. or as specified in this Agreed Order.
24. Nothing in this Agreed Order shall prevent IDEM or anyone acting on its behalf from communicating with the U.S. Environmental Protection Agency ("U.S. EPA") or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs

or penalties Respondent may incur as a result of such communications with the U.S. EPA or any other agency or entity.

25. This Agreed Order shall remain in effect until Respondent has complied with all terms and conditions of this Agreed Order and IDEM has issued a Resolution of Case letter to Respondent.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

TECHNICAL RECOMMENDATION:
Department of Environmental
Management

By: David P. McIver

David P. McIver
Section Chief
Enforcement Section
Office of Air Quality

Date: October 5, 2021

RESPONDENT:
Safety-Kleen Systems, Inc.

By: [Signature]

Printed: Eric Gerstenberg

Title: Chief Operating Officer

Date: 10/15/2021

COUNSEL FOR RESPONDENT:

By: Tony Salhi

Date: 10/19/2021

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT THIS 20th DAY OF
October, 2021.

For the Commissioner:

[Signature]

Matthew Stuckey
Assistant Commissioner
Office of Air Quality
Indiana Department of Environmental
Management

From: [Fitzpatrick, Timmery A](#)
To: [ROBERTS, GOLDIE](#)
Subject: RE: Safety-Kleen Systems, Inc. (#25282-A, 27677-A, 27834-A) Adopted Agreed Order
Date: Wednesday, October 20, 2021 3:51:13 PM

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Thank you Goldie, confirming receipt.

Thanks,
Timmery

Safety Starts with Me: Live It 3-6-5

Timmery Fitzpatrick

Assistant General Counsel

Clean Harbors

P.O. Box 9149

42 Longwater Drive

Norwell, MA 02061-9149

(o) 781.792.5172

(c) 781.204.9253

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