STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No.

STATE OF VERMONT,
Plaintiff,

v.

SAFETY-KLEEN SYSTEMS, INC.
Defendant.

PLEADINGS BY AGREEMENT

The State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Safety-Kleen Systems, Inc. (Defendant), hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g):

THE STATE'S ALLEGATIONS

The Parties

1. The State of Vermont Agency of Natural Resources (the Agency) is a state agency created through 3 V.S.A. § 2802. The principal situs of the State of Vermont is Montpelier in Washington County.

2. The Vermont Attorney General represents the State in civil causes "in which the State is a party" including enforcing against violations of 10 V.S.A., Chapter 159; the Vermont Hazardous Waste Management Regulations (VHWMR); and the terms and conditions of Agency issued Hazardous Waste Facility Permits. See 3 V.S.A. § 157.

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3. Defendant Safety-Kleen Systems, Inc. (Defendant) is a Wisconsin for-profit Corporation, with its principal place of business in Norwell, Massachusetts, authorized to do business in the State of Vermont.

4. Defendant operates a permitted commercial hazardous waste storage and transfer facility located at 23 West 2nd Street, Barre, Vermont 05641 (the Facility).

5. Defendant provides customers with services for the collection, storage, and transportation of "vacuum waste," in addition to other waste management services.

6. Venue is proper in Vermont Superior Court, Washington Unit, Civil Division. See 12 V.S.A. § 402 ("An action before a Superior Court shall be brought in the unit in which one of the parties resides, if either resides in the State[.]").

Statutory and Regulatory Structure

7. The Agency regulates the management, transportation, treatment, disposal, and storage of hazardous waste through 10 V.S.A., Chapter 159 and the Vermont Hazardous Waste Management Regulations (VHWMR).

8. The State's hazardous waste program is federally approved and the State has been delegated primary authority for hazardous waste management by the United States Environmental Protection Agency (EPA).

9. On September 26, 2007, Defendant was issued a Hazardous Waste Facility Permit pursuant to 10 V.S.A., Chapter 159 and Vermont Hazardous

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Waste Management Regulations § 7-504 to operate the Facility (Defendant's Permit).

10. Defendant's Facility is a "certified hazardous waste facility" as defined in VHWMR § 7-103. A "Certified hazardous waste facility" is a "treatment, storage or disposal facility which is authorized to operate" under a federally approved state hazardous waste program.

11. Defendant is a "generator" as defined in VHWMR § 7-103 and is subject to the standards governing "Large Quantity Generators" set out in VHWMR § 7-308, pursuant to VHWMR § 7-504(e)(4).

12. Section 7-303 of the VHWMR requires generators to determine if wastes generated are hazardous wastes in accordance with VHWMR § 7-202.

13. Pursuant to VHWMR § 7-504(e), every certified hazardous waste facility "shall, at a minimum, be designed, constructed, operated, and maintained in accordance with" a list of regulatory provisions including 40 C.F.R. 264.13(a)(1). Part 264.13(a)(1) requires that "[b]efore an owner or operator treats, stores, or disposes of any hazardous wastes . . . he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with" the VHWMR.

14. Pursuant to VHWMR §§ 7-302(c) and 40 C.F.R. 268.3 (made applicable through VHWMR §§ 7-504(e)(3) and 7-106(a)), "no generator,

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transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment" or to circumvent other requirements of the VHWMR.

15. Pursuant to VHWMR §§ 7-308(b)(4), 7-504(e)(4), and § 7-106(a) and 40 C.F.R. 268.7(a), every large quantity hazardous waste generator and certified facility is required to comply with the Land Disposal Restrictions (LDRs), testing, tracking, and record keeping requirements for all hazardous waste set out in 40 CFR Part 268.7. These requirements include analyzing the hazardous waste collected and notifying entities receiving hazardous waste from the facility as to whether the waste is subject to the LDRs.

16. Pursuant to VHWMR §§ 7-308(b)(7), 7-504(e)(4), and 7-311(g), every hazardous waste generator and certified facility is required to meet certain minimum standards for secondary containment, monitoring, tank testing, and other requirements for hazardous waste storage. These include certification by a professional engineer that the containment unit complies with standards, volume monitoring for the waste stored, regular tank testing, and other requirements.

17. The VHWMR require that mechanical or physical means be employed to prevent hazardous wastes from freezing where hazardous waste is stored in aboveground tanks. VHWMR §§ 7-311(a)(3) and 7-504(e)(4).

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18. Defendant's Permit includes condition 5.2 which states:

> Safety-Kleen shall design, maintain and operate the facility in a manner which minimizes the possibility of fire, explosion, or any unplanned, sudden or non-sudden release of a hazardous waste or hazardous waste constituents to air, soil, surface waters or groundwater which could threaten human health or the environment. Safety-Kleen shall take all actions necessary to minimize these threats by implementing the applicable provisions of the Preparedness and Prevention Plan (Appendix G) of this permit.

19. Defendant's Permit includes condition 5.11 which states:

> Safety-Kleen may receive from off-site, store, treat and/or transfer for disposal, only those hazardous wastes specified in Waste Types and Characteristics (Appendix A) of this permit.

20. Defendant's Permit includes condition 5.16 which states:

> Safety-Kleen shall manage all bulk liquid hazardous waste stored at the facility in accordance with the procedures contained in Management of Waste in a Tank (Appendix L) of this permit. .

21. Defendant's Permit includes condition 7.2 which states:

> Any hazardous waste removed from the facility shall be transported by a Vermont-permitted hazardous waste transporter, in accordance with the VHWMR, to an appropriate facility.

22. Defendant's Permit includes condition 7.3 which states:

> Safety-Kleen shall not accept any shipment of hazardous waste which is not accompanied by a manifest, unless the waste is received from a small quantity generator where the waste is reclaimed under a contractual agreement with Safety-Kleen in accordance with VHWMR § 7-702(c), or a conditionally exempt generator who is exempt from the manifest requirements pursuant to VHWMR § 7-306(c)(3).

23. Pursuant to 10 V.S.A. § 8221, the Attorney General is authorized to bring an action in Superior Court to enforce Vermont's environmental laws.

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24. Pursuant to 10 V.S.A. § 8002(9), a "violation" is defined as "noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permit, assurances, or orders." Chapter 159 (Waste Management) is one of the statutes listed in 10 V.S.A. § 8003.

Facts Relating to Defendant

25. In operating the Facility, Defendant provides services to customers engaged in the business of automotive repair, automotive salvage, industrial maintenance, manufacturing, photo processing, dry cleaning, and other industrial or institutional clients.

26. As a hazardous waste storage and transfer facility, Defendant is permitted to accept a limited amount of identified hazardous waste and store it on-site for up to one year.

27. As a hazardous waste transporter and storage facility, Defendant is required to comply with the VHWMR and Vermont's waste management laws, 10 V.S.A., Chapter 159.

28. In addition to its other waste management services, Defendant serves various customers with the collection and disposal of "vacuum waste," referred to as the vacuum waste program.

29. Through the vacuum waste program, Defendant uses tanker trucks equipped with vacuums to collect waste customers, including from, but not limited to, sumps, oil/water separators, trench drains, floor drains, process tanks, drums, or other devices.

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30. Defendant's employees collect waste from numerous customers in a given tanker truck along a collection route. This results in multiple customers' waste being co-mingled in the truck tank.

31. Defendant then co-mingles the all collected vacuum waste again at the Facility in a single outdoor 20,000-gallon tank which is not permitted to store hazardous waste under Defendant's Permit (the vacuum waste storage tank). During the timeframe described below, the vacuum waste storage tank was unheated and subject to freezing.

32. Defendant's vacuum waste program is designed to handle only non-hazardous waste.

33. Defendant classifies its vacuum waste program customers as either "automotive" customers or "industrial" customers.

34. For automotive customers, Defendant relies solely on generator knowledge to determine the nature of the waste collected.

35. For non-automotive customers, Defendant relies, in part, on generator knowledge to determine the nature of the waste collected. Under certain conditions, a pre-qualification laboratory analysis is conducted by a Safety-Kleen or third-party laboratory prior to accepting the customer's waste stream into the vacuum waste program. The pre-qualification analysis of the vacuum waste sample is intended to supplement the generator knowledge information provided on the profile form by the generator and identify the nature of the waste stream.

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36. Defendant's employees collect a "retain sample" of each volume of vacuum waste accepted from each customer at the time of collection. Defendant stores these retain samples at the Facility for three months, so they are available for analysis should a question arise about the nature of the waste collected. After three months, Defendant disposes of the retain samples.

37. As described below, Defendant has failed to ensure that the waste collected through the vacuum waste program is not hazardous waste as defined in 10 V.S.A. Chapter 159 and the Vermont Hazardous Waste Management Regulations.

38. Additionally, Defendant improperly accepted hazardous waste through the vacuum waste program, and that waste was handled, transported, and stored in violation of 10 V.S.A. Chapter 159, the Vermont Hazardous Waste Management Regulations, and Defendant's Hazardous Waste Facility Permit.

Defendant's Failure to Make Hazardous Waste Determination

39. On or about June 8, 2016, representatives of the Agency inspected Defendant's Facility.

40. As part of this inspection Agency representatives inspected the "retain samples" for one month of vacuum waste customers.

41. Agency representatives observed that the retain samples, despite being described as "oily water," varied considerably with regard to color, viscosity, opaqueness, and number of physical phases. The samples were not

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consistent with what Agency staff understood the vacuum waste program to accept, i.e. oily water.

42. Defendant's facility manager provided copies of "waste profiles" for each of the retain samples. These profiles were not internally consistent regarding the nature of the wastes and were insufficient to determine whether the collected vacuum waste was hazardous waste.

43. Upon request, Defendant provided the Agency with pre-qualification sample test results for the waste profiles corresponding with the retain samples from non-automotive customers inspected during the June 2016 inspection.

44. The pre-qualification sample tests, conducted by Defendant, were intended, in part, to verify the customer's non-hazardous waste designation prior to Defendant collecting, co-mingling, storing, and transporting the wastes as non-hazardous through the vacuum waste program.

45. Two of these pre-qualification sample tests indicated that the wastes contained hazardous waste constituents above regulatory limits: one sample indicated chromium levels of 72 mg/L, where the regulatory level is 5 mg/L and lead at 210 mg/L, significantly above the regulatory level of 5 mg/L; a second sample indicated lead results of 17 mg/L. These wastes meet the hazardous waste characteristic of toxicity and have EPA Hazardous Waste Codes D007 (for Chromium) and D008 (for lead). These wastes were stated to be 94% aqueous and 3% "organic" and 91% aqueous and 9% organic, respectively. Defendant asserts that it accepted these waste streams into the vacuum waste program

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based on its belief that the waste qualified as "used oil" and was to be managed and disposed of pursuant to Subchapter 8 of the VHWMR and 40 CFR Part 279 . Defendant also asserts that the waste streams were managed as "Used Oil" by Defendant and the disposal facility. The Agency, based on the information available, cannot confirm that the pre-qualification samples tests at issue qualified for regulation as used oil under Subchapter 8 of the VHWMR.

46. All of the pre-qualification sample test results reviewed also had detection limits for certain hazardous constituents, including metals and volatile organic compounds that were significantly above regulatory levels. Some detection limits were 20 times the regulatory level. These test results were, therefore, insufficient to determine that the wastes were non-hazardous wastes.

Storage and Transport of Hazardous Waste

47. On or about January 8, 2017, Defendant shipped an approximately 5,090-gallon volume of comingled vacuum service waste from the vacuum waste storage tank at Defendant's Facility. This waste was shipped as non-hazardous waste to Environmental Recovery Corp, a non-hazardous waste facility in Pennsylvania. This shipment was tested by that receiving facility and determined to be hazardous waste for having a pH of 12.63 and therefore exhibiting the hazardous waste characteristic of corrosivity identified by EPA Hazardous Waste Code D002.

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48. Environmental Recovery Corp rejected the shipment which was then shipped by Defendant using a uniform hazardous waste manifest to a permitted hazardous waste facility in Connecticut.

49. The same waste was then shipped, using a new hazardous waste manifest identifying the waste with EPA Hazardous Waste Code D002 for corrosivity as well as Code D008 for the hazardous waste toxicity characteristic for lead, to a permitted hazardous waste facility in Maryland.

50. An additional volume of the same waste remained in the vacuum waste storage tank at Defendant's Facility with approximately 4,250 gallons of the waste being frozen.

51. The remaining volume was subsequently shipped as hazardous waste using hazardous waste manifests.

52. Defendant's permit does not authorize the storage of hazardous waste in the vacuum waste storage tank. The tank is not designed or operated to minimize the possibility of fire, explosion, or any unplanned, sudden or non-sudden release of waste to air, soil, surface waters or groundwater. The tank does not comply with the secondary containment, monitoring, tank testing, or other requirements for the storage of hazardous wastes.

53. The vacuum waste storage tank at Defendant's facility was not equipped with any mechanical or physical means to prevent the waste from freezing.

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54. Vacuum waste is not included as a hazardous waste that Defendant is authorized to accept, store, or transport under Defendant's Permit.

THE STATE'S ALLEGATIONS

The State of Vermont alleges the following violations by Defendant, which violations relate specifically to the hazardous waste described in paragraphs 47–51 above:

55. Defendant violated HWMR §7-303 by co-mingling, transporting, and storing vacuum services waste by making an incorrect non-hazardous waste determination.

56. Defendant violated VHWMR 7-504(e)(1) and 40 C.F.R. § 264.13(a)(1) by failing to undertake a detailed chemical and physical analysis of the vacuum waste collected and stored at the Facility, which waste on at least one occasion and upon information and belief on other occasions constituted hazardous waste. Defendant violated VHWMR § 7-504(e)(1) and 40 C.F.R. § 264.13(b) by failing to develop and follow a written waste analysis plan for the vacuum services waste.

57. Defendant violated 40 C.F.R. § 268.3(a), applicable pursuant to VHWMR §§ 7-106(c), 7-302(b), 7-308(b)(4), and 5-504(e)(3), because Defendant accepted hazardous waste as vacuum waste and comingled that waste twice, first in the vacuum trucks, second in the vacuum waste tank, diluting restricted waste. In one instance the co-mingled and diluted waste met the hazardous waste classifications for lead and for corrosivity.

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58. Defendant violated 40 C.F.R. § 268.7(a), applicable pursuant to VHWMR §§ 7-106(a), 7-308(b)(4), and 7-504(e)(4), by failing to make any determination regarding treatment or handling of the vacuum services waste and by failing to comply with any of the LDR requirements.

59. Defendant violated VHWMR §§ 504(e)(4) and 311(a)(3) by storing hazardous waste in the vacuum waste storage tank which was not equipped to prevent freezing and by allowing hazardous waste to freeze in the vacuum waste storage tank.

60. Defendant violated VHWMR § 7-311(g) by storing hazardous waste in a tank that was not marked as containing hazardous waste and which did not comply with all secondary containment, monitoring, tank testing, and other requirements.

61. Defendant violated Condition 5.2 of Defendant's Facility Permit, requiring Defendant to ensure that the facility be maintained and operated in a manner to minimize the possibility of fire, explosion, or release of hazardous waste, by storing corrosive hazardous waste in an unpermitted steel tank.

62. Defendant violated Permit Condition 5.16 of Defendant's Facility Permit, which requires that Defendant manage all bulk liquid hazardous waste stored at the facility in accordance with the procedures specified in Appendix L of the Permit which establishes the management of the hazardous waste tanks at the facility, by storing waste that exhibited the hazardous waste

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characteristics of corrosivity and toxicity (for lead) in the vacuum waste storage tank which is not included in Appendix L of the Permit.

63. Defendant violated Permit Condition 5.11 of Defendant's Facility Permit, which requires that Defendant receive from off-site and store only those hazardous wastes specified in Appendix A of the Permit, by receiving from off-site and storing hazardous vacuum waste which is not included in Appendix A of the Permit.

64. Defendant violated Conditions 7.2 and 7.3 of Defendant's Facility Permit, which require that Defendant remove hazardous waste from the Facility by a Vermont-permitted hazardous waste transporter to an appropriate facility and shall not receive any hazardous waste that is not accompanied by a hazardous waste manifest, by removing hazardous vacuum waste not in compliance with Condition 7.2 and by accepting the hazardous vacuum services waste without a hazardous waste manifest.

DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATIONS

Defendant answers the preceding allegations as follows:

65. Defendant admits the factual allegations set forth in paragraphs 1–6 and 25–54 solely for purposes of resolving this case.

66. Without formally admitting or denying liability, Defendant agrees to this settlement of the above violations alleged in paragraphs 55–64 in order to resolve this case.

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67. Defendant agrees that each of the violations alleged in paragraphs 55–64 above is deemed proven and established as a "prior violation" in any future State proceeding considering Defendant's compliance record, including but not limited to administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010, and permit proceedings.

Dated at Montpelier, Vermont, this 11 day of February 2019.

STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: Ryan Kane by Laura Murphy w/permission
Ryan P. Kane
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802-828-2153
Ryan.Kane@vermont.gov

Dated at Norwell, Massachusetts this 1st day of February 2019.

SAFETY-KLEEN SYSTEMS, INC.

By: William F. Connors
William F. Connors
Title: Sr. Vice President, Compliance

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