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ex rel. Barbara A. Lee, Director, California  
Department of Toxic Substances Control*

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ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

SEP 15 2015

Sherri R. Carter, Executive Officer/Clerk  
By Cristina Grijalva, Deputy

**Exempt from Filing Fees pursuant to  
Government Code section 6103**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

**BC 594721**

**PEOPLE OF THE STATE OF CALIFORNIA,  
ex rel. Barbara A. Lee, Director, California  
Department of Toxic Substances Control,**

Plaintiff,

v.

**SAFETY-KLEEN SYSTEMS, INC., a  
Wisconsin Corporation,**

Defendant.

Case No.

**COMPLAINT FOR CIVIL  
PENALTIES, INJUNCTIVE AND  
OTHER EQUITABLE RELIEF**

The People of the State of California, ex rel. Barbara A. Lee, Director, California  
Department of Toxic Substances Control ("the Department"), alleges as follows:

**STATEMENT OF THE CASE**

1. The Department seeks civil penalties from and injunctive relief against Safety-Kleen Systems, Inc. (referred to herein as "Safety-Kleen") for past and continuing violations of the California Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code sections 25100 *et seq.* ("HWCL") and the implementing regulations, California Code of Regulations, Title 22, Chapter 30, Division 4.

///

1 **PLAINTIFF**

2 2. The Department is a public agency of the State of California organized and  
3 existing under and pursuant to sections 58000 *et seq.* of the Health and Safety Code. The  
4 Department is the state agency responsible for the administration of the HWCL.

5 3. Pursuant to sections 25181 and 25182 of the California Health and Safety Code,  
6 the Attorney General of the State of California is authorized, at the request of the Department, to  
7 commence an action in the name of the People for civil penalties and injunctive relief under the  
8 HWCL. The Department has asked the Attorney General to apply to this Court for an injunction  
9 enjoining Safety-Kleen, and any and all other defendants named herein, from continuing  
10 violations of the HWCL as alleged herein.

11 **DEFENDANT**

12 4. Defendant Safety-Kleen is, and at all times relevant here was, a Wisconsin  
13 corporation with its headquarters in Richardson, Texas. Safety-Kleen is one of the largest  
14 collectors of used oil in North America. Its nationwide business includes operation of hazardous  
15 waste facilities in California, and transportation of hazardous wastes throughout California.

16 5. Safety-Kleen is a "person," as defined at California Health & Safety Code section  
17 25118.

18 **JURISDICTION AND VENUE; UNLIMITED CIVIL CASE**

19 6. This court has jurisdiction pursuant to California Constitution, Article 6, section  
20 10, and California Health and Safety Code section 25181(a). Venue is proper in this court  
21 pursuant to California Health and Safety Code section 25183 and because multiple of the  
22 violations at issue occurred within Los Angeles County.

23 7. This action is an unlimited civil case because the amount of penalties requested  
24 exceeds \$25,000, and because none of the Department's causes of action meets the criteria for  
25 limited civil cases in the Code of Civil Procedure.

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## STATUTORY AND REGULATORY BACKGROUND

8. The State of California has enacted a comprehensive "cradle to grave" statutory and regulatory framework for the generation, handling, treatment, transport, and disposal of hazardous wastes. The framework contained in the HWCL and its implementing regulations, which are found at California Code of Regulations, title 22, sections 66260.1 *et seq.*, specifies requirements for the registration, tracking, storage, treatment, and disposal of hazardous wastes to protect the public and the environment from the risks posed by the improper management of hazardous wastes.

9. The HWCL includes requirements regarding the management of used oil, a hazardous waste. (See Health & Saf. Code, § 25250, *et seq.*)

10. Among other requirements, Health and Safety Code section 25250.29(a) specifies that loads identified as "used oil" are required to be tested for flashpoint, polychlorinated biphenyls (PCB), and halogens prior to being transported out-of-state:

[B]efore a load of used oil is shipped to a transfer facility, recycling facility, or facility located out of the state, the used oil shall be tested and analyzed [...] to ensure that the used oil meets all of the following characteristics: (1) A flashpoint above 100 degrees Fahrenheit [;] (2) A polychlorinated biphenyls (PCB) concentration of less than 5 ppm [; and] (3) A concentration of total halogens of 1000 ppm or less...

11. Pursuant to Health and Safety Code section 25163, it is unlawful for any person to transport hazardous materials unless the person holds a valid registration to do so, issued by the Department.

12. Unless certain exceptions apply, the registered hazardous waste transporter of the waste is the party responsible for testing the used oil under Health and Safety Code section 25250.29(a).

13. The HWCL authorizes the Court to issue civil penalties under two distinct and alternative provisions for failure to satisfy its requirements. Section 25189 of the Health and Safety Code creates liability for any negligent or intentional violation of the HWCL. Section 25189.2 is a strict liability provision, which creates liability for any violation of the HWCL. A

1 person may not be held liable for civil penalties imposed under section 25189 and section  
2 ~~25189.2 for the same act. (Health and Saf. Code, § 25189.2(d).)~~

3 14. Sections 25181 and 25184 of the HWCL authorize and direct the Court to enjoin  
4 any ongoing or potential violation of the HWCL.

5 15. Section 25181 of the Health and Safety Code authorizes the Court to grant "a  
6 permanent or temporary injunction, restraining order, or other order" when the Attorney General,  
7 at the request of the Department, applies for an order enjoining violations of the HWCL or of any  
8 rule or requirement issued thereunder, and the Department shows that the person against whom  
9 the order is sought has engaged in, is engaged in, or is about to engage in any acts or practices  
10 which constitute or will constitute a violation of any such provision.

11 16. Health and Safety Code section 25184 provides that in civil actions brought  
12 pursuant to the HWCL in which an injunction or temporary restraining order is sought:

13 [I]t shall not be necessary to allege or prove at any stage of the proceeding that  
14 irreparable damage will occur should the temporary restraining order, preliminary  
15 injunction, or permanent injunction not be issued; or that the remedy at law is  
16 inadequate, and the temporary restraining order, preliminary injunction, or  
17 permanent injunction shall issue without such allegations and without such proof.

### 18 **FACTUAL BACKGROUND**

19 17. At all times relevant hereto, Safety-Kleen has been, and is, a registered transporter  
20 in California, and it has collected and transported loads of hazardous waste, including used oil,  
21 from waste generators to facilities within and outside of California.

22 18. Between January 4, 2010 and May 7, 2012, Safety-Kleen collected loads of used  
23 oil from various of its customers within California (the Subject Loads), and transported them  
24 under hazardous waste manifests to facilities outside of California.

25 19. All of the Subject Loads were subject to the testing requirements of Health and  
26 Safety Code section 25250.29.

27 20. Safety-Kleen, as the transporter of the Subject Loads to out-of-state facilities, was  
28 responsible for compliance with Health and Safety Code section 25250.29 testing requirements.

21. Safety-Kleen neither tested nor caused to be tested any of the Subject Loads as required by section 25250.29.

22. The Department has requested that the Attorney General seek penalties in the Superior Court against Safety-Kleen for violating Health and Safety Code section 25250.29, and an injunction enjoining Safety-Kleen from continuing these violations.

**FIRST CAUSE OF ACTION**

**(HWCL – Testing of Used Oil Prior to Shipping)**

**(Health & Saf. Code, § 25250.29)**

23. Paragraphs 1 through 22 are re-alleged as if fully set forth herein.

24. Subject to certain exceptions that do not apply here, “before a load of used oil is shipped to a transfer facility, recycling facility, or facility located out of the state, the used oil shall be tested and analyzed by a laboratory accredited by the State Department of Public Health [...] to ensure that the used oil meets all of the following characteristics: (1) A flashpoint above 100 degrees Fahrenheit [;] (2) A polychlorinated biphenyls (PCB) concentration of less than 5 ppm [; and] (3) A concentration of total halogens of 1000 ppm or less...” (Health & Saf. Code, § 25250.29(a).)

25. The testing and analysis required “shall be accomplished by a registered hazardous waste transporter prior to acceptance at a transfer facility or recycling facility, or shipment out of the state...” (Health & Saf. Code, § 25250.29(b).)

26. On numerous separate occasions beginning on or before January 4, 2010 and continuing through to at least May 7, 2012, Safety-Kleen transported containers of used oil under hazardous waste manifest (the Subject Loads referenced herein) to facilities outside of California without testing the used oil as required under section 25250.29, thereby violating the HWCL.

27. Each failure of Safety-Kleen to test a load of used oil as set forth in Health and Safety Code section 25250.29 subjects Safety-Kleen to a penalty of up to \$25,000 for each separate violation, or, for continuing violations, for each day that the violation continues, according to proof at trial, pursuant to Health and Safety Code sections 25189, subdivision (b) or 25189.2, subdivision (b).

28. The Department is further entitled to injunctive relief to abate existing violations ~~and prevent future violations of the HWCL and its implementing regulations.~~

### REQUEST FOR RELIEF

The Department requests that the Court grant relief as follows:

1. Enter judgment that Safety-Kleen has violated the HWCL as described in this Complaint;
2. Enter judgment that Safety-Kleen is liable for civil penalties for those violations as authorized by Health and Safety Code section 25189, subdivision (b) or, in the alternative, by Health and Safety Code section 25189.2, subdivision (b), according to proof;
3. Enter an injunction ordering Safety-Kleen and its agents, servants, employees, representatives, and all persons acting in concert or participating with Safety-Kleen, to comply with the HWCL, and the regulations adopted thereunder, as described herein;
4. Grant the Department its costs of suit herein; and
5. Grant such other and further relief as the Court deems appropriate.

Dated: September 15, 2015

Respectfully Submitted,

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Attorney General of California  
SARAH E. MORRISON  
Supervising Deputy Attorney General

Original Signed by Megan Hey

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