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California, ex. rel. Meredith Williams, Director,
Department of Toxic Substances Control*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103
ENDORSED
FILED
ALAMEDA COUNTY
SEP 29 2021
CLERK OF THE SUPERIOR COURT
By JERRIE MOYER Deputy**

**PEOPLE OF THE STATE OF
CALIFORNIA, EX REL. MEREDITH
WILLIAMS, DIRECTOR, CALIFORNIA
DEPARTMENT OF TOXIC SUBSTANCES
CONTROL,**

Plaintiff,

v.

**SAFETY-KLEEN OF CALIFORNIA, INC.,
SAFETY-KLEEN SYSTEMS, INC.,
SAFETY-KLEEN, INC., CLEAN
HARBORS, INC., AND DOES 1
THROUGH 10, INCLUSIVE,**

Defendants.

Case No. **RG21114277**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Saf. Code, §§ 25181, 25184, 25189
and 25189.2)

Plaintiff, the People of the State of California, ex rel. Meredith Williams, Director,
California Department of Toxic Substances Control ("Department" or "DTSC" or "Plaintiff"),
alleges the following:

COPY

1 **STATEMENT OF THE CASE**

2 1. Plaintiff is informed and believes that Defendants Safety-Kleen of California, Inc.,
3 Safety-Kleen Systems, Inc., Safety-Kleen, Inc., and Clean Harbors, Inc., (collectively,
4 “Defendants”), at all times relevant to this Complaint, owned, operated, and/or managed the used
5 oil treatment and storage facility located at 6880 Smith Avenue, Newark, California 94560
6 (referred to herein as the “Facility”).

7 2. On and prior to March 14, 2107, and continuing through at least May 8, 2019,
8 Defendants have violated the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the
9 Health and Safety Code, and its implementing regulations set forth in California Code of
10 Regulations, Title 22, division 4.5, section 66260.1 et seq. (collectively, “HWCL”) by operating
11 the Facility and managing hazardous waste without complying with the applicable laws and
12 regulations.

13 3. The Department hereby seeks civil penalties from, and injunctive relief against,
14 Defendants for their violations of the HWCL.

15 **PLAINTIFF**

16 4. The Department is a state agency organized and existing pursuant to sections 58000
17 *et seq.* of the Health and Safety Code. The Department is the state agency responsible for
18 administering and enforcing the HWCL.

19 5. Meredith Williams is the Director of the Department.

20 6. Health and Safety Code sections 25181, subdivision (a), and 25182 authorize the
21 Attorney General of the State of California, at the request of the Department, to commence an
22 action in the name of the People of the State of California for civil penalties and injunctive relief
23 under the HWCL. The Department has requested the Attorney General to apply to this Court for
24 injunctive relief and civil penalties pursuant to Health and Safety Code sections 25181, 25184,
25 25189, and 25189.2 for violations of the HWCL by Defendants.

26 **DEFENDANTS**

27 7. Plaintiff is informed and believes that defendant Safety-Kleen of California, Inc.
28 (“Safety-Kleen”), a California corporation, has owned and/or operated the Facility, since on or

1 about September 13, 2013. Plaintiff is further informed and believes that defendant Safety-Kleen
2 of California, Inc., formerly known as Evergreen Oil, Inc., was acquired by defendant Safety-
3 Kleen Systems, Inc., a Wisconsin corporation, in 2013, and that defendant Safety-Kleen of
4 California, Inc. was at all times relevant to this Complaint a 100%-owned subsidiary of defendant
5 Safety-Kleen Systems, Inc. Plaintiff is further informed and believes that defendant Safety-Kleen,
6 Inc., a Delaware corporation, at all times relevant to this Complaint, owned Safety-Kleen
7 Systems, Inc.; and that defendant Clean Harbors, Inc., a publicly-traded Massachusetts
8 corporation, at all times relevant to this Complaint, owned Safety-Kleen, Inc.

9 8. When reference is made in this Complaint to any act or omission of Defendants, such
10 allegation shall include: the acts and omissions of the owners, officers, directors, employees,
11 agents, contractors, affiliates, servants, and/or representatives of Defendants while acting within
12 the course and scope of their employment or agency on behalf of Defendants during the relevant
13 time period.

14 9. Each of the Defendants is a “person,” as that term is defined in Health and Safety
15 Code section 25118. Each of the Defendants also is an “owner,” “operator,” or “owner or
16 operator” as those terms are defined in California Code of Regulations, Title 22, section
17 66260.10.

18 10. The names, identities, and capacities, whether individual, corporate, or otherwise, of
19 defendants named herein as Does 1 through 10, inclusive, are unknown at this time to the
20 Department. The Department therefore sues said defendants by such fictitious names. The
21 Department will seek leave to amend this Complaint to show their true names, identities, and
22 capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
23 defendant designated as a DOE defendant is responsible, along with the named Defendants, for
24 the violations alleged in this Complaint.

25 11. Each reference in this Complaint to “Defendants” refers not only to the named
26 Defendants, but also all DOE defendants sued under fictitious names.

1 **JURISDICTION AND VENUE**

2 12. This Court has jurisdiction over the subject matter of this action and Defendants
3 pursuant to California Constitution Article VI, section 10, and Health and Safety Code section
4 25181, and Code of Civil Procedure section 410.10.

5 13. Venue is proper in this Court pursuant to Health and Safety Code section 25183 in
6 that the violations at issue occurred at the Facility, which is in Alameda County.

7 14. This action is an unlimited civil case because the amount of penalties requested
8 exceeds twenty-five thousand dollars (\$25,000) and because none of the Plaintiff's causes of
9 action meets the criteria for limited civil cases in the Code of Civil Procedure.

10 **HWCL STATUTORY AND REGULATORY BACKGROUND**

11 15. The State of California has enacted a comprehensive statutory and regulatory
12 framework covering the generation, handling, treatment, transport, and disposal of hazardous
13 wastes. This framework, contained in the HWCL, mandates a "cradle-to-grave" registration,
14 tracking, storage, treatment, and disposal system for the protection of the public from the risks
15 posed by hazardous waste and for the protection of the environment – *i.e.*, soil, air, surface water,
16 groundwater – from contamination by hazardous wastes and their constituents. Except where
17 otherwise expressly defined in this Complaint, all terms shall be interpreted consistent with the
18 HWCL.

19 16. Pursuant to Health and Safety Code sections 25101, subdivision (d), and 25159-
20 25159.9, the Department administers the HWCL, pursuant to authorization received from the
21 United States Environmental Protection Agency, in lieu of federal administration of the federal
22 Resources and Recovery Act ("RCRA"), which is codified at 42 United States Code section 6901
23 *et seq.* Federal law prohibits California from imposing any requirements less stringent than those
24 authorized under RCRA. (42 U.S.C. § 6929.) Certain provisions of the HWCL are stricter than
25 the analogous provisions of RCRA.

26 17. The HWCL charges the Department with the responsibility to adopt standards and
27 regulations for the management of hazardous waste to protect public health and the environment.
28 (Health & Saf. Code, § 25150, subd. (a).) Accordingly, the Department has promulgated

1 regulations setting forth numerous, extensive, environmental- and health-protective requirements
2 for the day-to-day operation of hazardous waste generators, transporters, and owners and
3 operators of hazardous waste facilities. (See Cal. Code Regs., tit. 22, § 66260.1 et seq.)

4 18. A “hazardous waste” is a waste that meets any of the criteria established by DTSC.
5 (Health & Saf. Code, §§ 25117 and 25141.) The criteria consist of lists of particular hazardous
6 wastes and waste exhibiting certain characteristics. (Cal. Code Regs., tit., §§ 66261.1 –
7 66261.126, appen.)

8 19. The HWCL has more inclusive definition of “hazardous waste” than does federal law.
9 Hazardous wastes that are regulated under California law but not federal law are known as “non-
10 RCRA hazardous wastes.” (Health & Saf. Code, § 25117.9.)

11 20. The HWCL, at Health and Safety Code section 25201, subdivision (a), provides that
12 an owner or operator of a hazardous waste management facility may not “accept, treat, store, or
13 dispose of hazardous waste at the facility, area, or site, unless the owner or operator holds a
14 hazardous waste facilities permit or other grant of authorization from the Department to use and
15 operate the facility, area, or site”

16 21. California Code of Regulations, Title 22, sections 66270.1 to 66270.27 specify the
17 procedure for the owner and operator of a hazardous waste facility to apply for a hazardous waste
18 facilities permit. The HWCL, at Health and Safety Code section 25200, subdivision (a),
19 authorizes the Department to issue operating permits, called hazardous waste facilities permits, to
20 the owners and operators of facilities managing hazardous wastes.

21 22. The HWCL requires that the owner and operator of a hazardous waste facility comply
22 with the provisions of the facility’s hazardous waste management permit.

23 a. Health and Safety Code section 25202, subdivision (a), requires the owner or
24 operator of a hazardous waste facility who holds a hazardous waste facilities permit to “comply
25 with the conditions of [that] permit.”

26 b. California Code of Regulations, Title 22, section 66270.30, subdivision (a),
27 requires that a “permittee shall comply with all conditions of [the] permit” and specifies that
28 “[a]ny permit noncompliance . . . constitutes a violation of the [HWCL] . . . and is grounds for

1 enforcement action; for permit termination, revocation and reissuance, or modification; or for
2 denial of a permit renewal application.”

3 c. Reference made in this Complaint to any section or part of the Permit shall
4 mean the section(s) or part(s) of the Permit that existed at the time the violation(s) occurred as
5 alleged in this Complaint.

6 **ENFORCEMENT AUTHORITY UNDER THE HWCL**

7 23. The HWCL authorizes the Court to impose civil penalties under two distinct and
8 alternative statutory provisions. Section 25189 of the Health and Safety Code creates liability for
9 any negligent or intentional violation of the HWCL. Section 25189.2 is a strict liability provision,
10 which imposes liability for any violation of the HWCL. A person may not be held liable for a
11 civil penalty under both sections 25189 and section 25189.2 for the same act. (Health & Saf.
12 Code, §§ 25189, subd. (g), and 25189.2, subd. (f).)

13 24. Until December 31, 2017, the HWCL authorized the Court to impose a civil penalty
14 of up to twenty-five thousand dollars (\$25,000) for each violation of a separate provision of the
15 HWCL, and an additional civil penalty of twenty-five thousand dollars (\$25,000) per day for each
16 day such violation continued. (Stats. 2017, c. 499, § 3.) Beginning on January 1, 2018, the HWCL
17 authorized the Court to impose a civil penalty of up to seventy thousand dollars (\$70,000) for
18 each violation of a separate provision of the HWCL, and an additional civil penalty of seventy
19 thousand dollars (\$70,000) per day for each day such violation continued. (Health & Saf. Code,
20 §§ 25189, subd. (b), and 25189.2, subd. (b).)

21 25. The HWCL, at Health and Safety Code sections 25181 and 25184, authorizes and
22 directs the Court to enjoin any ongoing or potential violation of the HWCL.

23 26. Health and Safety Code section 25181, subdivision (a), provides that when the
24 Department determines that any person has engaged in, is engaged in, or is about to engage in any
25 acts or practices which constitute or will constitute a violation of any provision of the HWCL or
26 any rule or requirement issued or promulgated thereunder, and, the Department makes a makes a
27 request to the Attorney General to do so, the Attorney General may make application to the
28 Superior Court for an order enjoining such acts or practices, or for an order directing compliance,

1 and upon a showing by the Department that such person has engaged in or is about to engage in
2 any such acts or practices, a permanent or temporary injunction, restraining order, or other order
3 may be granted.

4 27. Health and Safety Code section 25184 provides that:

5 In any civil action brought pursuant to [the HWCL] in which a temporary restraining
6 order, preliminary injunction, or permanent injunction is sought, it shall not be
7 necessary to allege or prove at any stage of the proceeding that irreparable damage
8 will occur should the temporary restraining order, preliminary injunction, or
9 permanent injunction not be issued; or that the remedy at law is inadequate, and the
10 temporary restraining order, preliminary injunction, or permanent injunction shall
11 issue without such allegations and without such proof.

12 GENERAL ALLEGATIONS

13 28. The Facility is situated on a 7-acre parcel and is identified by Alameda County
14 Assessor Parcel Number 92A-2300-10-3. The Facility is one of the largest used oil collectors in
15 California and its activities include, but are not limited to, receiving, storing, and blending used
16 oil and related material. The Facility contains a wastewater treatment plant, storage and
17 loading/unloading areas, drum storage areas, a drum crusher, and water collection systems.

18 29. Defendants have operated, and continue to operate, the Facility as an active DTSC-
19 permitted hazardous waste storage and treatment facility. The Facility's current hazardous waste
20 permit ("Permit"), which incorporates the Facility's Part A and Part B permit applications, was
21 issued by the Department in 2004 and was subsequently modified. The Permit expired on January
22 5, 2015.

23 30. Defendants continue to operate the Facility pending completion of the Department's
24 review of a permit renewal application submitted to the Department on June 27, 2014.

25 31. The Facility is authorized by the Department to engage in the storage and treatment of
26 hazardous waste.

27 2017 Inspection

28 32. The Department conducted a multi-day inspection of the Facility on March 14-16,
March 30, and October 11, 2017 ("2017 Inspection"). The Department determined during the
2017 Inspection that Defendants had violated the HWCL, issued a Summary of Violations on or
about March 30, 2017, and issued a letter augmenting the Summary of Violations on or about

1 April 25, 2017. The Department issued an Inspection Report for the 2017 Inspection on or about
2 May 11, 2017 and issued an Addendum to the Inspection Report on March 23, 2018. On or about
3 March 15, 2019, the Department issued a letter making revisions to the violations identified
4 during the 2017 Inspection.

5 **2018 Inspection**

6 33. The Department next conducted a multi-day inspection of the Facility on June 19 and
7 20, 2018 (“2018 Inspection”) and issued a Summary of Observations on or about June 20, 2018
8 and a Summary of Violations on or about June 26, 2018. The Department issued an Inspection
9 Report for the 2018 Inspection on or about July 24, 2018. On or about March 15, 2019, the
10 Department issued a letter making revisions to the violations identified during the 2018
11 Inspection.

12 **2019 Inspection**

13 34. The Department conducted its final inspection of the Facility relevant to this
14 Complaint on April 18, April 19, and May 8, 2019 (“2019 Inspection”), issued a Summary of
15 Observations on or about April 19, 2019, and a Summary of Violations on or about May 17,
16 2019. The Department subsequently issued an Inspection Report for the 2019 Inspection on or
17 about June 14, 2019. The Department issued letters on or about June 28, 2019 and August 16,
18 2019 making revisions to the violations cited during the 2019 Inspection.

19 **FIRST CAUSE OF ACTION**

20 (Unauthorized Transfer and Storage of Hazardous Waste in Violation of Health &
21 Saf. Code, §§ 25201, subd. (a), and 25202, subd. (a); Cal. Code Regs., tit. 22, §
66270.30, subd. (a); and Permit Part III, § 2(b).)

22 35. Paragraphs 1 through 34 are re-alleged as if set forth fully herein.

23 36. Health and Safety Code 25201, subdivision (a) provides that any owner or operator of
24 a hazardous waste facility may not accept or store a hazardous waste at a facility, area, or site,
25 unless the owner or operator holds a hazardous waste facilities permit or other grant of
26 authorization from the Department to use and operate the facility, area, or site to accept or store
27 hazardous waste.

1 37. Health and Safety Code section 25202, subdivision (a), provides that the owner or
2 operator of a hazardous waste facility that holds a hazardous waste facilities permit shall comply
3 with the conditions of the permit.

4 38. California Code of Regulations, Title 22, section 66270.30, subdivision (a), provides
5 that a permittee (a person that holds a hazardous waste facilities permit from the Department)
6 shall comply with all conditions of its permit and that any permit noncompliance constitutes a
7 violation of the appropriate statute or regulation.

8 39. Permit Part III, section 2(b), authorizes Safety-Kleen to store and transfer hazardous
9 waste in accordance with the conditions of the Permit, and prohibits any storage of hazardous
10 wastes not specifically authorized in the Permit.

11 40. On or about September 12, 2016, Defendants violated Health and Safety Code
12 sections 25201, subdivision (a), and 25202, subdivision (a); California Code of Regulations, Title
13 22, section 66270.30, subdivision (a); and Permit Part III, section 2(b), when they transferred
14 approximately two thousand six hundred twenty (2,620) gallons of non-RCRA hazardous waste
15 liquids to an unlined, below-ground, concrete sump designed to contain stormwater that was
16 referred to as the “pit” – which was not authorized for the storage of hazardous waste – and stored
17 the liquids there.

18 41. On or about January 17, 2017, Defendants again violated Health and Safety Code
19 sections 25201, subdivision (a), and 25202, subdivision (a); California Code of Regulations, Title
20 22, section 66270.30, subdivision (a); and Permit Part III, section 2(b), when they transferred
21 approximately nine hundred eighty (980) gallons of non-RCRA hazardous waste liquids to the
22 “pit” – which was not authorized for the storage of hazardous waste – and stored the hazardous
23 liquids there. This violation constituted a repeat violation.

24 42. On or about December 11, 2017, Defendants again violated Health and Safety Code
25 sections 25201, subdivision (a), and 25202, subdivision (a); California Code of Regulations, Title
26 22, section 66270.30, subdivision (a); and Permit Part III, section 2(b), when they transferred
27 approximately two thousand eight hundred (2,800) gallons of non-RCRA hazardous waste in the
28

1 form of oily water sludge to a bin that was not authorized for the storage of hazardous waste and
2 stored the wastewater there. This violation constituted a repeat violation.

3 43. On or about June 19, 2018, Defendants again violated Health and Safety Code
4 sections 25201, subdivision (a), and 25202, subdivision (a); California Code of Regulations, Title
5 22, section 66270.30, subdivision (a); and Permit Part III, section 2(b), when they transferred
6 approximately six hundred (600) gallons of non-RCRA hazardous waste in the form of oily water
7 sludge to a bin that was not authorized for the storage of hazardous waste and stored the
8 wastewater there. This violation constituted a repeat violation.

9 44. Each violation of Health and Safety Code sections 25201, subdivision (a), and 25202,
10 subdivision (a), California Code of Regulations, Title 22, section 66270.30, subdivision (a)
11 subjects each Defendant to a separate penalty, according to proof at trial, pursuant to Health and
12 Safety Code Section 25189, subdivision (b), or, in the alternative, Health and Safety Code section
13 25189.2, subdivision (b).

14 45. The Department is further entitled to injunctive relief to prevent future violations of
15 the HWCL pursuant to Health and Safety Code section 25181, subdivision (a).

16 **SECOND CAUSE OF ACTION**

17 (Unauthorized Treatment of Hazardous Waste in Violation of Health & Saf. Code,
18 §§ 25201, subd. (a), and 25202, subd. (a); Cal. Code Regs., tit. 22, § 66270.30,
subd. (a); and Permit Part III, § 2(b).)

19 46. Paragraphs 1 through 45 are re-alleged as if set forth fully herein.

20 47. Health and Safety Code 25201, subdivision (a), provides that any owner or operator
21 of a hazardous waste facility may not treat a hazardous waste at a facility, area, or site, unless the
22 owner or operator holds a hazardous waste facilities permit or other grant of authorization from
23 the Department to use and operate the facility, area, or site to treat a hazardous waste.

24 48. Health and Safety Code section 25202, subdivision (a), provides that the owner or
25 operator of a hazardous waste facility that holds a hazardous waste facilities permit shall comply
26 with the conditions of the permit.

27 49. California Code of Regulations, Title 22, section 66270.30, subdivision (a), provides
28 that a permittee shall comply with all conditions of its permit and that any permit noncompliance

1 constitutes a violation of the appropriate statute or regulation, unless authorized by an emergency
2 permit.

3 50. Permit Part III, section 2(b), authorizes Safety-Kleen to treat hazardous waste in
4 accordance with the conditions of the Permit, and prohibits any treatment of hazardous wastes not
5 specifically authorized in the Permit.

6 51. On or after December 11, 2017, Defendants violated Health and Safety Code sections
7 25201, subdivision (a), and 25202, subdivision (a); California Code of Regulations, Title 22,
8 section 66270.30, subdivision (a); and Permit Part III, section 2(b), when they received hazardous
9 waste from off-site, placed it into a hopper, and treated the hazardous waste with an absorbent
10 material in an unpermitted area.

11 52. On or before June 19, 2018, Defendants again violated Health and Safety Code
12 sections 25201, subdivision (a), and 25202, subdivision (a); California Code of Regulations, Title
13 22, section 66270.30, subdivision (a); and Permit Part III, section 2(b), when they received
14 hazardous waste from off-site, placed it into a hopper, and treated the hazardous waste with an
15 absorbent material in an unpermitted area. This violation constituted a repeat violation.

16 53. On or before April 18, 2019, Defendants again violated Health and Safety Code
17 sections 25201, subdivision (a), and 25202, subdivision (a); California Code of Regulations, Title
18 22, section 66270.30, subdivision (a); and Permit Part III, section 2(b), when they received
19 hazardous waste from off-site, placed it into a hopper, and treated the hazardous waste with an
20 absorbent material in an unpermitted area—specifically, the Drum Storage Area, Pad #1, which is
21 only authorized for loading, unloading, and storage (not treatment). This violation constituted a
22 repeat violation.

23 54. On or before May 8, 2019, Defendants again violated Health and Safety Code
24 sections 25201, subdivision (a), and 25202, subdivision (a); California Code of Regulations, Title
25 22, section 66270.30, subdivision (a); and Permit Part III, section 2(b), when they received
26 hazardous waste from off-site, placed it into a hopper, and treated the hazardous waste with an
27 absorbent material in an unpermitted area—specifically, the Drum Storage Area, Pad #1, which is
28

1 only authorized for loading, unloading, and storage (not treatment). This violation constituted a
2 repeat violation.

3 55. Each violation of Health and Safety Code sections 25201, subdivision (a), and 25202,
4 subdivision (a), and California Code of Regulations, Title 22, § 66270.30, subdivision (a),
5 subjects each Defendant to a separate penalty, according to proof at trial, pursuant to Health and
6 Safety Code Section 25189, subdivision (b), or, in the alternative, Health and Safety Code section
7 25189.2, subdivision (b).

8 56. The Department is further entitled to injunctive relief to prevent future violations of
9 the HWCL pursuant to Health and Safety Code section 25181, subdivision (a).

10 **THIRD CAUSE OF ACTION**

11 (Failure to Minimize Possibility of Release of Hazardous Waste in Violation of
12 Cal. Code Regs., tit. 22, § 66264.31.)

13 57. Paragraphs 1 through 56 are re-alleged as if set forth fully herein.

14 58. California Code of Regulations, Title 22, section 66264.31 requires that facilities
15 permitted under the HWCL be maintained and operated to minimize the possibility of a fire,
16 explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste
17 constituents to air, soil, or surface water which could threaten human health or the environment.

18 59. On or about March 14, 2017, and on or about October 11, 2017, Defendants violated
19 California Code of Regulations, Title 22, section 66264.31, in that they failed to maintain and
20 operate its facility to minimize the possibility of a release of hazardous waste by having oil spill
21 onto the ground from pumps and buckets that were placed under the leaking pipes.

22 60. Each violation of California Code of Regulations, Title 22, section 66264.31 subjects
23 each Defendant to a separate penalty, according to proof at trial, pursuant to Health and Safety
24 Code Section 25189, subdivision (b), or, in the alternative, Health and Safety Code section
25 25189.2, subdivision (b).

26 61. The Department is further entitled to injunctive relief to prevent future violations of
27 the HWCL pursuant to Health and Safety Code section 25181, subdivision (a).
28

1 **FOURTH CAUSE OF ACTION**

2 (Failure to Maintain Secondary Containment Sealant in Violation of Health & Saf.
3 Code, § 25202, subd. (a); Cal. Code Regs., tit. 22, §§ 66264.175, subd. (b)(1),
4 66265.15, subd. (a), and 66270.30, subd. (a); and
5 Permit Part B, § IV(b)(IV 13)(a)(1)(a).)

6 62. Paragraphs 1 through 61 are re-alleged as if set forth fully herein.

7 63. Health and Safety Code section 25202, subdivision (a), provides that the owner or
8 operator of a hazardous waste facility that holds a hazardous waste facilities permit shall comply
9 with the conditions of the permit.

10 64. California Code of Regulations, Title 22, section 66264.175, subdivision (a), provides
11 that container transfer and storage areas at HWCL permitted facilities shall have a containment
12 system that is designed and operated in accordance with subdivision (b) of that section. California
13 Code of Regulations, Title 22, section 66264.175, subdivision (b), provides requirements for
14 containment systems in container transfer and storage areas to prevent the release of hazardous
15 waste. One of those requirements is that a base shall underlie the containers which is free of
16 cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated
17 precipitation until the collected material is detected and removed.

18 65. California Code of Regulations, Title 22, section 66264.15, subdivision (a), requires
19 that an owner or operator of a hazardous waste facility inspect its facility for malfunctions or
20 deteriorations, operator errors, and discharges which may be causing, or may lead to, the release
21 of hazardous waste constituents to the environment or a threat to human health. Further, the
22 owner or operator is required to conduct these inspections frequently enough to identify problems
23 in time to correct them before they harm human health or the environment.

24 66. California Code of Regulations, Title 22, section 66270.30, subdivision (a), provides
25 that a permittee shall comply with all conditions of its permit and that any permit noncompliance
26 constitutes a violation of the appropriate statute or regulation, unless authorized by an emergency
27 permit.

28 67. Permit Part B, section IV(b)(IV 13)(a)(1)(a) provides that all secondary containment
units for tanks at the Facility be coated with sealant.

1 five hundred (500) gallons) and TA-1246 (with a capacity of five hundred (500) gallons) without
2 first requesting and obtaining approval of a permit modification from the Department.

3 75. Each violation of California Code of Regulations, Title 22, section 66270.42 subjects
4 each Defendant to a separate penalty, according to proof at trial, pursuant to Health and Safety
5 Code Section 25189, subdivision (b), or, in the alternative, Health and Safety Code section
6 25189.2, subdivision (b).

7 76. The Department is further entitled to injunctive relief to prevent future violations of
8 the HWCL pursuant to Health and Safety Code section 25181, subdivision (a).

9 **SIXTH CAUSE OF ACTION**

10 (Failure to Complete Partial Closure of Tanks in Violation of Cal. Code Regs., tit.
11 22, § 66264.113, subd. (b).)

12 77. Paragraphs 1 through 76 are re-alleged as if set forth fully herein.

13 78. California Code of Regulations, Title 22, section 66264.113, subdivision (b), requires
14 an owner or operator of a hazardous waste facility to complete partial closure activities for a
15 permitted unit in accordance with the approved closure plan within 180 days after receiving the
16 final volume of hazardous waste for the unit, unless an extension is approved.

17 79. Beginning on or about July 7, 2016, and continuing until at least August 23, 2016,
18 Defendants violated California Code of Regulations, Title 22, section 66164.113, subdivision (b),
19 in that they did not complete closure activities for tanks T-704A and T-704B within the time
20 period that was authorized by the Department in response to Defendants' extension request to
21 close the tanks after the required 180 days.

22 80. Health and Safety Code Section 25189, subdivision (b), or, in the alternative, Health
23 and Safety Code section 25189.2, subdivision (b), authorizes the Court to impose civil penalties
24 for each separate violation of California Code of Regulations, Title 22, section 66264.113,
25 subdivision (b), or, for continuing violations, for each day the violations continue, according to
26 proof at trial.

27 81. The Department is further entitled to injunctive relief to prevent future violations of
28 the HWCL pursuant to Health and Safety Code section 25181, subdivision (a).

1 **SEVENTH CAUSE OF ACTION**

2 (Failure to Timely Complete Closure of Tanks and Dissolved Air Flootation Unit
3 in Accordance with Soil Sampling and Characterization Plan in Violation of
4 Health & Safety Code § 25202, subd. (a); Cal. Code Regs., tit. 22, § 66270.30,
5 subd. (a); Permit Part B, § XI, and the Approved Soil Sampling and
6 Characterization Plan.)

7 82. Paragraphs 1 through 81 are re-alleged as if set forth fully herein.

8 83. Health and Safety Code section 25202, subdivision (a), provides that the owner or
9 operator of a hazardous waste facility that holds a hazardous waste facilities permit shall comply
10 with the conditions of the permit.

11 84. California Code of Regulations, Title 22, section 66270.30, subdivision (a), provides
12 that a permittee shall comply with all conditions of its permit and that any permit noncompliance
13 constitutes a violation of the appropriate statute or regulation, unless authorized by an emergency
14 permit.

15 85. Permit Part III, section 1(a), incorporates the Part “A” and Part “B” Permit
16 Applications dated January 2004 into the Permit.

17 86. Permit Part B, section XI, is the closure plan, which was subsequently modified as a
18 result of DTSC’s approval of the Soil Sampling and Characterization Plan. The Soil Sampling
19 and Characterization Plan required submission of the Partial Closure Report for tanks T-704A and
20 T-704B and the dissolved air flotation unit by July 20, 2018.

21 87. Beginning on or about July 20, 2018, and continuing until on or about December 11,
22 2018, Defendants violated Health and Safety Code section 25202, subdivision (a), California
23 Code of Regulations, Title 22, section 66270.30, subdivision (a), and the Department-approved
24 Soil Sampling and Characterization Plan, in that Defendants failed to submit the required Partial
25 Closure Report. Defendants ultimately submitted the Partial Closure Report on or about
26 December 11, 2018, which was approximately one hundred forty-four (144) days late.

27 88. Health and Safety Code Section 25189, subdivision (b), or, in the alternative, Health
28 and Safety Code section 25189.2, subdivision (b), authorizes the Court to impose civil penalties
for each separate violation of Health and Safety Code section 25202, subdivision (a), and

1 California Code of Regulations, Title 22, section 66270.30, subdivision (a), or, for continuing
2 violations, for each day the violations continue, according to proof at trial.

3 89. The Department is further entitled to injunctive relief to prevent future violations of
4 the HWCL pursuant to Health and Safety Code section 25181, subdivision (a).

5 **EIGHTH CAUSE OF ACTION**

6 (Failure to Adhere to Partial Closure Plan in Violation of Health & Saf. Code,
7 § 25202, subd. (a); Cal. Code Regs. § 66270.30, subd. (a); and Permit Part B, §
8 XI.)

9 90. Paragraphs 1 through 89 are re-alleged as if set forth fully herein.

10 91. Health and Safety Code section 25202, subdivision (a), provides that the owner or
11 operator of a hazardous waste facility who holds a hazardous waste facilities permit shall comply
12 with the conditions of the permit.

13 92. California Code of Regulations, Title 22, section 66270.30, subdivision (a), provides
14 that a permittee shall comply with all conditions of its permit, and that any permit noncompliance
15 constitutes a violation of the appropriate statute or regulation, unless authorized by an emergency
16 permit.

17 93. Permit Part III, section 1(a), incorporates the Part "A" and Part "B" Permit
18 Applications dated January 2004 into the Permit.

19 94. Permit Part B, section XI, including Attachment XI-2, provides the Closure Plan for
20 the Facility and requires specifically, upon the closure of tanks T-704A and T-704B and the
21 dissolved air filtration unit, that soil, concrete, wipe, and rinsate samples be taken to confirm that
22 the decontamination levels for these units are met. Permit Part B, section XI, further requires that
23 wipe samples be analyzed for total petroleum hydrocarbons and total metals, and that rinsate
24 samples be analyzed for total metals, volatile organic compounds, semi-volatile organic
25 compounds, and polychlorinated biphenyls.

26 95. Defendants violated Health and Safety Code section 25202, subdivision (a);
27 California Code of Regulations, Title 22, section 66270.30, subdivision (a); and Permit Part B,
28 section XI, in that Defendants failed to collect rinsate samples for tanks T-704A, T-704 B, and the

1 dissolved flotation unit, and failed to analyze wipe samples collected for tanks T-704A, T-704 B,
2 and the dissolved flotation unit for petroleum hydrocarbons or metals.

3 96. Each violation of Health and Safety Code section 25202, subdivision (a), and
4 California Code of Regulations, Title 22, section 66270.30, subdivision (a), subjects each
5 Defendant to a separate penalty, according to proof at trial, pursuant to Health and Safety Code
6 Section 25189, subdivision (b), or, in the alternative, Health and Safety Code section 25189.2,
7 subdivision (b).

8 97. The Department is further entitled to injunctive relief to prevent future violations of
9 the HWCL pursuant to Health and Safety Code section 25181, subdivision (a).

10 **NINTH CAUSE OF ACTION**

11 (Failure to Timely Submit Certification of Independent Qualified Engineer of
12 Closure of Tanks T-704A and T-704B and Air Flotation Unit in Violation of Cal.
Code Regs., tit. 22, § 66264.115.)

13 98. Paragraphs 1 through 97 are re-alleged as if set forth fully herein.

14 99. California Code of Regulations, Title 22, section 66264.115, requires that the owner
15 or operator of a hazardous waste facility submit to the Department, by registered mail, within
16 sixty (60) days of completing partial closure, a certification that a hazardous waste management
17 unit has been closed in accordance with the specifications of the approved closure plan.

18 100. Beginning on or about October 22, 2016, and continuing until on or about August 14,
19 2017, Defendants violated California Code of Regulations, Title 22, section 66264.115, in that
20 they failed to submit a certification by an independent qualified professional engineer that tanks
21 T-704A and T-704B had been closed in accordance with the approved closure plan, which was
22 required to be submitted within sixty (60) days of the completion of closure activities for those
23 tanks on August 23, 2016. Defendants did not submit the certification until on or about August
24 14, 2017, which was approximately three hundred fifty-six (356) days late.

25 101. Beginning on or about November 29, 2016, and continuing until on or about
26 November 6, 2017, Defendants violated California Code of Regulations, Title 22, section
27 66264.115, in that they failed to submit a certification by an independent qualified professional
28 engineer that the dissolved air filtration unit had been closed in accordance with the approved

1 closure plan, which was required to be submitted within sixty (60) days of the completion of
2 closure activities for the dissolved air filtration unit on September 30, 2016. Defendants did not
3 submit the certification until on or about November 6, 2017, which was approximately four
4 hundred two (402) days late.

5 102. Health and Safety Code Section 25189, subdivision (b), or, in the alternative, Health
6 and Safety Code section 25189.2, subdivision (b), authorizes the Court to impose civil penalties
7 for each separate violation of California Code of Regulations, Title 22, section 66264.115, or, for
8 continuing violations, for each day the violations continue, according to proof at trial.

9 103. The Department is further entitled to injunctive relief to prevent future violations of
10 the HWCL pursuant to Health and Safety Code section 25181, subdivision (a).

11 **TENTH CAUSE OF ACTION**

12 (Failure to Conduct Required Public Meeting and Provide Notification to the
13 Public in Violation of Health & Saf. Code, § 25202, subd. (a); Cal. Code Regs., tit.
14 22, § 66270.30, subd. (a); and Permit Part V, § (1) (m) & (n).)

14 104. Paragraphs 1 through 103 are re-alleged as if set forth fully herein.

15 105. Health and Safety Code section 25202, subdivision (a), provides that the owner or
16 operator of a hazardous waste facility that holds a hazardous waste facilities permit shall comply
17 with the conditions of the permit.

18 106. California Code of Regulations, Title 22, section 66270.30, subdivision (a), provides
19 that a permittee shall comply with all conditions of its permit and that any permit noncompliance
20 constitutes a violation of the appropriate statute or regulation, unless authorized by an emergency
21 permit.

22 107. Permit Part V, section (1)(m), requires Safety-Kleen to conduct a public meeting,
23 coordinated with the Newark Fire Department, to review and coordinate the Contingency Plan
24 and Emergency Procedures, to provide notification of the meeting by mail to all businesses,
25 residences, and schools located within a half-mile radius of the Facility, to conduct open houses
26 and provide information regarding emergency notification procedures, and provide information
27 on the reporting of odor complaints to Safety-Kleen and local government agencies.
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1 108. Permit Part V, section (1)(n), requires Safety-Kleen to conduct the public meeting
2 provided under the Permit Part V, section (1)(m), no later than one hundred eighty (180) days
3 from the effective date of the Permit and at least every three years thereafter.

4 109. As of the Department's inspection of the Facility on March 14, 2017, Defendants had
5 last conducted the public meeting required by Permit Part V, section (1)(m), on November 6,
6 2013.

7 110. Beginning on or about November 6, 2016, and continuing until or about May 8, 2018,
8 Defendants violated Health and Safety Code section 25202, subdivision (a), California Code of
9 Regulations, Title 22, section 66270.30, subdivision (a), and Permit Part V, sections (1)(m) and
10 (1) (n), in that Defendants failed to conduct the required public meeting.

11 111. Health and Safety Code Section 25189, subdivision (b), or, in the alternative, Health
12 and Safety Code section 25189.2, subdivision (b), authorizes the Court to impose civil penalties
13 for each separate violation of Health and Safety Code section 25202, subdivision (a), and
14 California Code of Regulations, Title 22, section 66270.30, subdivision (a), or, for continuing
15 violations, for each day the violations continue, according to proof at trial.

16 112. The Department is further entitled to injunctive relief to prevent future violations of
17 the HWCL pursuant to Health and Safety Code section 25181, subdivision (a).

18 **REQUEST FOR RELIEF**

19 113. Enter judgment that Defendants have violated the HWCL as set forth in the First
20 through Tenth Causes of Action;

21 114. Enter Judgment that Defendants are liable for civil penalties for the violations set
22 forth in the First through Tenth Causes of Action as authorized by Health and Safety Code
23 sections 25189 and 25189.2, in an amount according to proof;

24 115. Enter permanent injunctions or other orders enjoining Defendants from illegally
25 managing hazardous waste in California and requiring defendants to otherwise comply with the
26 HWCL;

27 116. Grant the Department its costs of inspection, investigation, enforcement, prosecution,
28 and suit herein, and its attorneys' fees and experts' fees, as provided by law; and,

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117. Grant such other and further relief as the Court deems just and proper.

Dated: September 29, 2021

Respectfully Submitted,

ROB BONTA
Attorney General of California
LAURA J. ZUCKERMAN
Supervising Deputy Attorney General

Original signed by Somerset Perry

✓SOMERSET PERRY ✓
ADRIANNA LOBATO
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Director, Department of Toxic Substances
Control*

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