

IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

94CV00558GLF

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

SAFETY-KLEEN CORP.

Defendant.

: CASE NO.
:
: JUDGE
:
: CONSENT ORDER

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WHEREAS, the Complaint in the above-captioned matter has been filed herein;
and

WHEREAS, Plaintiff and Safety-Kleen Corp. ("Safety-Kleen") have agreed that
settlement of this matter is in the public interest and that entry of this Consent Order
without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, this Consent Order is entered into between the parties without trial
or disposition by the Court of any issue of law or of fact, without any admission of fact
or liability, and without waiver of any defenses available to Safety-Kleen; and

WHEREAS, Plaintiff and Safety-Kleen have consented to the entry of this
Consent Order and request that the Court enter this Consent Order;

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of
the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this

case. The Complaint states a claim upon which relief can be granted against Safety-Kleen under Chapter 3734 of the Ohio Revised Code ("O.R.C.") and regulations promulgated thereunder. Venue is proper in this Court.

II. SATISFACTION OF LAWSUIT

2. Plaintiff alleges in its Complaint that Safety-Kleen violated various sections of Ohio Revised Code (R. C.) Chapter 3734 and the rules adopted thereunder at the following Safety-Kleen facilities (hereinafter "Facilities") :

581 Milliken Drive
Hebron, Licking County, Ohio 43205-9687
EPA ID # OHD980587364
(Hereinafter "Hebron Facility")

354 Portage Blvd.
Kent, Portage County, Ohio 44240
EPA ID # OHD981099401
(Hereinafter "Kent Facility")

4465 Marketing Place
Groveport, Franklin County, Ohio 43125
EPA ID # OHD981000664
(Hereinafter "Groveport Facility")

1169 Industrial Parkway
Brunswick, Medina County, Ohio 44212
EPA ID # OHD000720987
(Hereinafter "Brunswick Facility")

11919 Tramway Drive
Sharonville, Hamilton County, Ohio 45241
EPA ID # OHD981187313
(Hereinafter "Sharonville Facility")

5148 Tractor Rd.
Toledo, Lucas County, Ohio 43616
EPA ID # OHD981097876
(Hereinafter "Toledo Facility")

4205 Lisa Drive
Tipp City, Miami County, Ohio 45371
EPA ID # OHD980683155
(Hereinafter "Tipp City Facility")

1171 1/2 North Meridian Road
Youngstown, Mahoning County, Ohio 44039
EPA ID # OHD980990162
(Hereinafter "Youngstown Facility")

3. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil or administrative liability by Safety-Kleen for all claims against Safety-Kleen alleged in the Complaint until the date of the entry of this Consent Order, and for violations occurring before the date of entry of this Consent Order which were cited in any Ohio EPA inspection reports and/or notices of violation pertaining to the Facilities.

4. Notwithstanding the satisfaction of liability granted by this Consent Order, this Consent Order shall not be construed as an admission on the part of Ohio EPA that Safety-Kleen is presently in compliance with any or all of the laws and regulations applicable to the Facilities, including, but not limited to, the regulations cited in the above-referenced inspection reports and notices of violation. Nothing in this Consent Order shall be used or construed, in the context of administrative permit proceedings or otherwise, to demonstrate compliance with any applicable legal or regulatory requirement. Ohio EPA may consider the allegations set forth in the Complaint, the inspection reports, and/or the notice of violation, or the evidence thereof, in the context of any administrative permit proceedings.

III. PERSONS BOUND

5. The provisions of this Consent Order shall apply to and be binding upon Safety-Kleen Corp., its agents, officers, servants, employees, assigns, stockholders and directors and those persons in active concert or participation with them who receive actual notice of the order whether by personal service or otherwise. In the

event that Safety-Kleen, prior to termination of this Consent Order, sells or transfers its interest in one or more of the Facilities referenced in Paragraph 2, above, it shall advise the purchaser or transferee of the existence of this Order, and shall notify Plaintiff of such sale or transfer. Safety-Kleen's successors and assigns of any such transferred Facility shall be bound by the terms of this Consent Order.

IV. RESERVATION OF RIGHTS

6. Nothing in this Consent Order, including the requirement that Safety-Kleen pay stipulated penalties for violations of this Consent Order, shall be construed so as to limit the authority of the State of Ohio to seek injunctive relief or any penalties for claims not referenced in paragraph 3, above, including continuing or recurring violations of the laws and regulations cited in the Complaint or in any inspection report or notice of violation pertaining to the Facilities. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to deny or modify any permit, plan, or other regulatory instrument for any of the Facilities, or to recommend the denial or modification of said permit, plan, or other instrument, on the basis of Safety-Kleen's past, present, or future failure to comply with any law or regulation applicable to any of the Facilities. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Safety-Kleen, to eliminate or mitigate conditions arising after the entry of this Consent Order which may present a threat to the public health, welfare or the environment. Nothing herein shall be construed to preclude the State from seeking that Safety-Kleen or others conduct remedial or corrective action or additional monitoring or testing at the Facilities as a result of their waste handling practices at the Facilities in addition to what they are otherwise required to conduct under the Consent Order.

7. Safety-Kleen reserves all its rights, claims and defenses with respect to any future claims which might be made by the State of Ohio.

V. RIGHT OF ENTRY

8. Safety-Kleen acknowledges that Plaintiff State of Ohio, its agents and employees are authorized by statute to enter into and onto Safety-Kleen's Facilities at any reasonable time, without a search warrant, to inspect the Facilities for compliance with R. C. Chapter 3734, the rules adopted thereunder, and this Consent Order. Nothing in this Consent Order shall be construed to limit Plaintiff's statutory or permit authority under Chapter 3734 or the rules adopted thereunder to conduct inspections, surveys and/or take samples. Nothing in the Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct regular and routine inspections pursuant to statute, regulation, or permit.

VI. EFFECT UPON OTHER ACTIONS

9. Nothing in this Consent Order shall be construed to relieve Safety-Kleen of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances or shall constitute a waiver or release of any right, remedy, defense or claim against Safety-Kleen with regard to any person not a party to this Consent Order.

VII. PERMANENT INJUNCTION

10. Except as otherwise specifically provided in this Consent Order, Safety-Kleen is hereby enjoined and ordered to comply immediately with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R.C. Chapter 3734 and O.A.C. Chapters 3745-50 through 3745-69.

11. Safety-Kleen is further specifically enjoined and ordered to comply immediately with the following hazardous waste rules at each of the specified Facilities to the extent that said rules are applicable to each Facility:

HEBRON FACILITY:

O.A.C. § 3745-52-11	O.A.C. § 3745-65-35	O.A.C. § 3745-66-77
O.A.C. § 3745-52-20	O.A.C. § 3745-65-52	O.A.C. § 3745-66-91
O.A.C. § 3745-52-34	O.A.C. § 3745-65-73	O.A.C. § 3745-66-92
O.A.C. § 3745-58-45	O.A.C. § 3745-66-12	O.A.C. § 3745-66-93
O.A.C. § 3745-59-07	O.A.C. § 3745-66-13	O.A.C. § 3745-66-95
O.A.C. § 3745-65-15	O.A.C. § 3745-66-47	
O.A.C. § 3745-65-16	O.A.C. § 3745-66-73	
O.A.C. § 3745-65-31	O.A.C. § 3745-66-74	

KENT FACILITY:

O.A.C. § 3745-52-20	O.A.C. § 3745-65-56	O.A.C. § 3745-66-44
O.A.C. § 3745-65-14	O.A.C. § 3745-65-73	O.A.C. § 3745-66-45
O.A.C. § 3745-65-16	O.A.C. § 3745-66-42	O.A.C. § 3745-66-93
O.A.C. § 3745-65-52	O.A.C. § 3745-66-43	

GROVEPORT FACILITY:

O.A.C. § 3745-59-07	O.A.C. § 3745-66-42	O.A.C. § 3745-66-74
O.A.C. § 3745-65-15	O.A.C. § 3745-66-43	O.A.C. § 3745-66-91
O.A.C. § 3745-65-33	O.A.C. § 3745-66-44	
O.A.C. § 3745-65-52	O.A.C. § 3745-66-45	

BRUNSWICK FACILITY:

O.A.C. § 3745-52-34	O.A.C. § 3745-65-37	O.A.C. § 3745-66-44
O.A.C. § 3745-53-12	O.A.C. § 3745-65-52	O.A.C. § 3745-66-45
O.A.C. § 3745-65-16	O.A.C. § 3745-65-56	O.A.C. § 3745-66-96
O.A.C. § 3745-65-17	O.A.C. § 3745-65-73	O.A.C. § 3745-66-73
O.A.C. § 3745-65-31	O.A.C. § 3745-66-42	O.A.C. § 3745-66-98
O.A.C. § 3745-65-35	O.A.C. § 3745-66-43	

SHARONVILLE FACILITY:

O.A.C. § 3745-59-07	O.A.C. § 3745-65-52	O.A.C. § 3745-66-44
O.A.C. § 3745-65-14	O.A.C. § 3745-65-54	O.A.C. § 3745-66-45
O.A.C. § 3745-65-15	O.A.C. § 3745-65-56	O.A.C. § 3745-66-73
O.A.C. § 3745-65-16	O.A.C. § 3745-65-73	O.A.C. § 3745-66-93
O.A.C. § 3745-65-35	O.A.C. § 3745-66-42	
O.A.C. § 3745-65-51	O.A.C. § 3745-66-43	

TOLEDO FACILITY:

O.A.C. § 3745-52-11	O.A.C. § 3745-65-73	O.A.C. § 3745-66-92
O.A.C. § 3745-52-20	O.A.C. § 3745-66-42	O.A.C. § 3745-66-93
O.A.C. § 3745-52-34	O.A.C. § 3745-66-43	O.A.C. § 3745-66-94
O.A.C. § 3745-59-07(A)	O.A.C. § 3745-66-44	
O.A.C. § 3745-65-15	O.A.C. § 3745-66-45	

TIPP CITY FACILITY:

O.A.C. § 3745-52-34	O.A.C. § 3745-65-52	O.A.C. § 3745-66-45
O.A.C. § 3745-59-07	O.A.C. § 3745-65-56	O.A.C. § 3745-66-73
O.A.C. § 3745-65-15	O.A.C. § 3745-65-73	O.A.C. § 3745-66-91
O.A.C. § 3745-65-16	O.A.C. § 3745-66-42	O.A.C. § 3745-66-93
O.A.C. § 3745-65-35	O.A.C. § 3745-66-43	O.A.C. § 3745-66-94
O.A.C. § 3745-65-51	O.A.C. § 3745-66-44	

YOUNGSTOWN FACILITY:

O.A.C. § 3745-52-20	O.A.C. § 3745-65-52	O.A.C. § 3745-65-73
O.A.C. § 3745-53-12	O.A.C. § 3745-65-53	O.A.C. § 3745-66-42
O.A.C. § 3745-65-14	O.A.C. § 3745-65-54	O.A.C. § 3745-66-43
O.A.C. § 3745-65-15	O.A.C. § 3745-65-55	O.A.C. § 3745-66-44
O.A.C. § 3745-65-16	O.A.C. § 3745-65-56	O.A.C. § 3745-66-45
O.A.C. § 3745-65-51	O.A.C. § 3745-65-71	O.A.C. § 3745-66-95

12. Notwithstanding the provisions of Paragraph Ten (10), above, Safety-Kleen is specifically enjoined and ordered to comply with the requirements of O.A.C. §§ 3745-66-42 and 3745-66-43 at the Hebron Facility within thirty days of entry of this

Consent Order.

13. The State of Ohio alleges that Safety-Kleen has violated, and continues to violate, O.A.C. § 3745-65-13 at the Hebron Facility. Safety-Kleen denies this allegation. The parties intend to address future compliance with O.A.C. § 3745-65-13 at the Hebron Facility through means other than this Consent Order, including, if necessary, the pending Part B permitting process for said Facility. Therefore, compliance with O.A.C. § 3745-65-13 at the Hebron Facility shall not be subject to injunction or stipulated penalties under Articles VII or XI of this Consent Order. Nothing in this Paragraph shall bar the State of Ohio from taking any action, including initiation of legal proceedings for injunctive relief and/or civil penalties, to address and/or abate violations of O.A.C. § 3745-65-13 at the Hebron Facility which may occur after the date of entry of this Consent Order.

14. Safety-Kleen is enjoined and ordered to cease and desist from separating, screening, filtering, or otherwise processing "hazardous waste," as that term is defined in O.A.C. § 3745-50-10(A)(42), at the Sharonville, Brunswick, Groveport, Youngstown, Tipp City, Kent, and Toledo Facilities by means of equipment identified by Safety-Kleen or otherwise known as "wet dumpsters," unless Safety-Kleen obtains a permit from the Ohio Hazardous Waste Facility Board authorizing such activity.

15. Safety-Kleen is enjoined and ordered to cease and desist from "treatment" of "hazardous waste," as those terms are defined in O.A.C. §§ 3745-50-10(A)(115) and -10(A)(42), respectively, at the Sharonville, Brunswick, Groveport, Youngstown, Tipp City, Kent, and Toledo Facilities unless Safety-Kleen obtains a permit from the Ohio Hazardous Waste Facility Board authorizing such activity.

16. Safety-Kleen is enjoined and ordered to cease and desist from "storage" of "hazardous waste," as those terms are defined in O.A.C. §§ 3745-50-10(A)(102) and -10(A)(42), respectively, at the Sharonville, Brunswick, Groveport, Youngstown, Tipp City, Kent, and Toledo Facilities except in accordance with the requirements and

restrictions of O.A.C. § 3745-53-12, unless Safety-Kleen obtains a permit from the Ohio Hazardous Waste Facility Board authorizing storage activity at said Facilities.

17. Safety-Kleen is enjoined and ordered to close the areas where hazardous waste has been stored, treated, or disposed at the Facilities referenced in Paragraph 15, above, in accordance with O.A.C. §§ 3745-66-10 through 3745-66-20. Within thirty (30) days after entry of this Consent Order, Safety-Kleen is enjoined and ordered to submit to the Ohio EPA, at the addresses set forth in Article VII, a closure plan for each of the Facilities referenced in Paragraph 15, above. Compliance with the thirty day time limitation set forth in the preceding sentence shall constitute compliance with O.A.C. 3745-66-12(D). All such plans shall meet the requirements of O.A.C. §§ 3745-66-12.

- A. The closure plans shall, at a minimum, address all areas where hazardous wastes were stored, treated, or disposed of at the subject Facilities.
- B. Following review of the closure plans, if the Ohio EPA determines that any closure plan is deficient and gives Safety-Kleen written notice of said deficiencies, Safety-Kleen is ordered and enjoined to submit to Ohio EPA, for each deficient closure plan, a revised closure plan within thirty (30) days of receipt of the notice of deficiencies. Said revised closure plan shall address the deficiencies identified by Ohio EPA in the notice of deficiencies.
- C. Following review of the revised plan, if the Ohio EPA determines that the revised closure plan is deficient, Ohio EPA may modify the plan and approve the modified plan.
- D. Immediately upon receipt of notice of approval by Ohio EPA of Safety-Kleen's closure plans, either as originally submitted, as revised, or as

revised and modified, Safety-Kleen is ordered and enjoined to implement the approved closure plans in the manner set forth in the approved closure plans. Safety-Kleen shall complete implementation of each approved closure plan within the time limits set forth in O.A.C. § 3745-66-13.

- E. Within sixty days of completion of closure of each Facility referenced in Paragraph 15, above, Safety-Kleen is ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to O.A.C. § 3745-66-15.

18. Effective immediately, and until the final disposition of the Part B hazardous waste permit for the Hebron Facility presently pending before Ohio EPA, Safety-Kleen shall not:

- A. exceed the storage capacity limitations or storage estimates specified on the Part A application for the Hebron Facility dated June 24, 1994, which application was received by Ohio EPA on July 1, 1994 (hereinafter "Part A Application");
- B. store at the Hebron Facility any hazardous waste not specifically listed on the Part A Application;
- C. store any category of hazardous waste in any area of the Hebron Facility for which the Part A Application does not specifically provide for storage of said waste category, provided, however, that wastes generated at the Hebron Facility or stored at said Facility for transfer in compliance with O.A.C. Chapter 3745-53 may be accumulated in areas other than those specified the Part A application if said wastes are segregated in an area separate from wastes generated off-site; or
- D. utilize any storage tank or bin, including the equipment referred to as "Safety-Therms," for fuel blending of hazardous wastes without ensuring

that said tank or bin meets all applicable standards of O.A.C. §§ 3745-66-90 through 3745-66-98.

19. Safety-Kleen is enjoined and ordered, within One Hundred Eighty (180) days of the entry of this Consent Order, and at least annually thereafter, to perform or cause to be performed periodic comprehensive audits of each Facility subject to this Consent Order to assess each Facility's compliance with all applicable Federal, State, and local environmental laws, regulations, and ordinances. To demonstrate compliance with this paragraph, Safety-Kleen shall submit to Ohio EPA, within thirty (30) days of each such audit, certification that the audit has been performed and that Safety-Kleen has taken or is taking action to correct any problems found during each audit. Nothing in this Paragraph shall be construed to require actions which are duplicative of any actions taken pursuant to existing Safety-Kleen policies or practices, provided said existing policies or practices fully satisfy the requirements of this Paragraph.

VIII. CIVIL PENALTY

20. Safety-Kleen is enjoined and ordered, within thirty (30) days from the date of entry of this Consent Order, pay to the State of Ohio a civil penalty of Eight Hundred Twenty-Five Thousand Dollars (\$825,000.00), by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio," to be deposited into the Hazardous Waste Cleanup 623 Account. Said check shall be delivered to the Administrative Assistant, Environmental Enforcement Section, Office of the Ohio Attorney General, 25th Floor, 30 East Broad Street, Columbus, Ohio 43266-0410.

IX. ENVIRONMENTAL IMPROVEMENT PROJECT(S)

21. Safety-Kleen is enjoined and ordered to develop and implement an Environmental Improvement Project ("Project") consisting of one or more Household

Hazardous Waste Collections ("HHW Collections") to be conducted in one or more of the Ohio Solid Waste Management Districts where Safety-Kleen has a Facility. Safety-Kleen shall expend at least One Hundred Sixty-Five Thousand Dollars (\$165,000.00) in execution of the Project.

22. Safety-Kleen shall develop the Project in coordination with the Solid Waste Management District(s) having jurisdiction over the community or communities in which the HHW Collections are to be conducted. At least 90 days prior to each HHW Collection, Safety-Kleen shall notify Ohio EPA and the Attorney General of the date and location of the HHW Collection and shall submit to Ohio EPA a detailed plan for the HHW Collection, including a list of wastes and materials which will be accepted and excluded during said HHW Collection. Ohio EPA agrees, within forty-five (45) days of receipt of Safety-Kleen's plan, to approve or disapprove said proposal and to notify Safety-Kleen of the basis for disapproval. Within thirty (30) days of receipt of notice of said disapproval, Safety-Kleen shall submit a revised plan addressing the deficiencies noted in the disapproval notice.

23. Within 90 days following each HHW Collection, Safety-Kleen shall submit to Ohio EPA and the Attorney General an itemized accounting of its expenditures relating to said HHW Collection.

24. Any public notice or advertisement of the Project, including any HHW Collection, shall not list Safety-Kleen as a sponsor or participant.

25. Safety-Kleen is ordered and enjoined to complete the Project and expend all funds required in connection therewith within three (3) years of the entry of this Consent Order. In the event that Safety-Kleen fails to make all expenditures required by this Article IX within three (3) years of the entry of this Consent Order, Safety-Kleen shall pay the unexpended balance to the State of Ohio as a civil penalty in accordance with Article VIII of this Consent Order. No stipulated penalties shall accrue pursuant to Article XI of this Consent Order for failure to make all

expenditures required by this Article IX, provided Safety-Kleen pays the unexpended balance to the State of Ohio in accordance with this Paragraph.

X. ENFORCEMENT COSTS

26. Safety-Kleen is ordered to pay the enforcement costs of Attorney General Lee Fisher expended in pursuing the instant action, totaling Ten Thousand Dollars (\$10,000.00), by delivering, within thirty (30) days after the entry of this Consent Order, a certified check in such amount for payment into the Ohio Attorney General's Special Reimbursement Fund, No. 612, Program No. 5718, payable to the order of "Treasurer, State of Ohio," to Plaintiff's counsel, Environmental Enforcement Section, 25th Floor, 30 E. Broad St., Columbus, Ohio 43266-0410. Any check submitted pursuant to this Paragraph shall be in addition to and separate from any check submitted pursuant to any other term of this Consent Order.

XI. STIPULATED PENALTIES

27. In the event that Safety-Kleen fails to meet any of the requirements of this Consent Order set forth in Paragraphs 11, 12, 14, 15, 16, 17, 18, 19, or 21-25, above, except O.A.C. § 3745-65-31 and Subparagraph 17(D) of this Consent Order, Safety-Kleen shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day of failure to meet a requirement, from one to sixty (60) days-- five hundred dollars (\$500.00) per day;
- b. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days -- seven hundred and fifty dollars (\$750.00) per day;
- c. For each day of failure to meet a requirement, from ninety-one (91) to one hundred twenty (120) days-- one thousand dollars (\$1,000.00) per day; and

- d. For each day of failure to meet a requirement, over one hundred twenty (120) days--one thousand five hundred dollars (\$1,500.00) per day.

28. Stipulated penalties shall accrue immediately from the date of occurrence of the violation(s) up to thirty days thereafter. Stipulated penalties for violations that continue for more than thirty days shall accrue only upon verbal or written notice by Ohio EPA to Safety-Kleen that one or more violation exists, and shall continue to accrue until the violation(s) have been abated. For purposes of this Paragraph, "verbal notice" shall mean notice to the facility manager or environmental compliance officer.

29. Notwithstanding the payment schedule specified in Paragraph 22, above, stipulated penalties for violations of the following sections of the Ohio Administrative Code shall accrue in the amount of \$25 per day of violation:

3745-52-20(B)	3745-66-12(B)
3745-58-45(B), (E)-(G)	3745-66-13(E)(1)
3745-65-15(B), (D)	3745-66-74(B)
3745-65-16(D)-(E)	3745-66-91(B)
3745-65-52	3745-66-92(A), (G)
3745-65-73(B)	3745-66-95(C)

30. Any payment required to be made under the provisions of this Article shall not be suspended by the Court, in whole or in part, and shall be made by delivering to the Administrative Assistant, Environmental Enforcement Section, Office of the Ohio Attorney General, 25th Floor, 30 East Broad Street, Columbus, Ohio 43266-0410, a certified check or checks for the appropriate amounts, within thirty (30) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio". The limitations on stipulated penalties imposed by this Order, or the fact that the State of Ohio obtains stipulated penalties under this Order, shall not limit the State's ability to seek enforcement of this Order

through contempt or otherwise, nor shall it limit the State's ability to seek other civil, administrative or criminal relief for future violations of law or of this Order, provided, however, that any other monetary relief obtained by the State for such future violations shall be reduced in an amount equal to the stipulated penalties for those identical violations which are actually paid by Safety-Kleen in accordance with this Section.

31. Notwithstanding the provisions of this Section concerning the payment of stipulated penalties, the Plaintiff may, in its sole and unreviewable discretion, defer, reduce or waive stipulated penalties that have accrued. Where Safety-Kleen asserts that a deferral, reduction, or waiver of stipulated penalties is appropriate, Safety-Kleen may timely present to the Plaintiff evidence supporting such assertion. The Plaintiff's decision regarding deferral, reduction, or waiver of such stipulated penalties shall not be subject to judicial review.

XII. POTENTIAL FORCE MAJEURE

32. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Safety-Kleen shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Safety-Kleen to prevent or minimize the delay and the timetable by which measures will be implemented. Safety-Kleen will adopt all reasonable measures to avoid or minimize any such delay.

33. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Safety-Kleen may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Safety-Kleen and the Plaintiff that it is premature at this time to raise and adjudicate

the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by the Plaintiff. At that time, Safety-Kleen will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Safety-Kleen. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Safety-Kleen or serve as a basis for an extension of time under this Consent Order. Failure by Safety-Kleen to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Safety-Kleen's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Safety-Kleen qualifies for an extension of a subsequent compliance date or dates. Safety-Kleen must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Safety-Kleen of any rights or defenses it may have under applicable law.

XIII. EFFECTIVE DATE AND TERMINATION

34. This Consent Order shall be effective upon the date of its entry by the court.

35. No earlier than three (3) years from the date of entry of this Consent Order, Safety-Kleen may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the application of this Consent Order to any Facility if Safety-Kleen can demonstrate that said Facility has been in compliance with the obligations of this Consent Order for such a three (3) year period. The Plaintiff takes no position at this time as to such motion and reserves any rights it may have to oppose the motion, including the basis that three (3) years is, in actuality, not an

appropriate time period.

XIV. RETENTION OF JURISDICTION

36. The Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order and resolving any disputes arising thereunder.

XV. COSTS

37. Safety-Kleen shall pay the court costs in this action.

XVI. NOTICE

38. Any notice or submission to the Ohio EPA as required by this Consent Order unless otherwise indicated shall be delivered to:

Ohio EPA
Division of Hazardous Waste Management
1800 Watermark Drive
Columbus, Ohio 43266-0149
Attn: Manager, Compliance Monitoring & Enforcement Section

Any notice or submission to Attorney General Lee Fisher as required by this Consent Order, unless otherwise indicated, shall be delivered to:

Christopher A. Walker
Assistant Attorney General
Office of the Attorney General
Environmental Enforcement Section
30 E. Broad St., 25th Floor
Columbus, Ohio 43266-0410

Any notice to be afforded to Safety-Kleen as required by this Consent Order shall be delivered to:

Safety-Kleen Corp.
Attn: Senior Vice President,
Environment, Health and Safety
1000 N. Randall Road
Elgin, Illinois 60123

IT IS SO ORDERED.

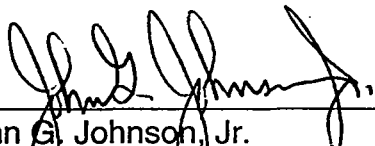


JUDGE, COURT OF COMMON PLEAS

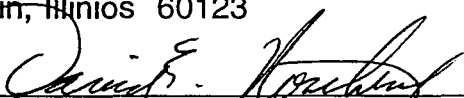
DATE: _____

APPROVED:

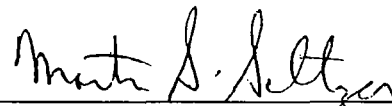
SAFETY-KLEEN CORP.

By: 

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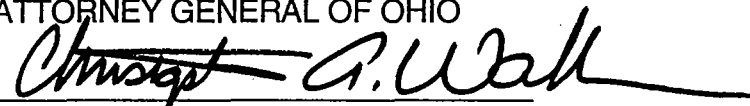


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