



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Memo

Date: Dec. 8, 2022
To: Pam Peck, Policy and Compliance Program Director
From: Joanna Dyer, Solid Waste Authorization Coordinator
Subject: Issuance of new Facility License No. L-197-23 for Safety-Kleen Systems, Inc. Clackamas Accumulation Center

Attached for your signature is new Solid Waste Facility License No. L-197-23 authorizing Safety-Kleen Systems, Inc. to receive special waste at its Clackamas Accumulation Center located at 16540 SE 130th Ave. in Clackamas (Metro Council District 2) for reload to authorized facilities for reuse, recycling and disposal. This memo provides background information on the applicant's request and recommends that Metro issue the proposed license to Safety-Kleen.



Safety-Kleen Systems Clackamas Accumulation Center location

Under Metro Code Section 5.01.080, the proposed license is to be approved or denied by the Chief Operating Officer (COO). On March 16, 2020, the COO delegated to the Policy and Compliance Director (the Director) authority to carry out the COO's responsibilities under Metro Code Chapter 5.01 for approving or denying a solid waste facility license. As such, the Director is authorized to approve this proposed license.

APPLICANT

The Safety-Kleen Clackamas Accumulation Center is owned and operated by Safety-Kleen Systems Inc., a subsidiary of Clean Harbors Environmental Services Inc. (Clean Harbors) headquartered in Norwell, Massachusetts. The solid waste received at this facility requires special handling and may include non-hazardous liquid or chemical waste generated at industrial or manufacturing facilities including but not limited to auto-body shops and chip manufacturers. Most of the waste arrives at the facility sealed in containers, and Safety-Kleen does not open containers on site. This containerized solid waste is placed in a "10-day storage area" inside the building before it is reloaded to permitted facilities for recycling or disposal. The facility also receives large volumes of ammonium sulfate, a byproduct of the semiconductor industry, which is stored in a holding tank adjacent to the building before being transported off-site for beneficial use. The facility holds a Solid Waste Transfer Station Disposal Site

Permit (No. 1621, expires July 2, 2029) issued by the Oregon Department of Environmental Quality (DEQ), which authorizes the facility to receive, store and transfer non-hazardous solid waste.

The Clackamas Accumulation Center also receives, stores, and reloads hazardous waste, sealed in containers, which is regulated by the Environmental Protection Agency (EPA) with local oversight provided by DEQ. The facility holds a Hazardous Waste Storage Permit (No. ORD981766124, expires Aug. 26, 2029) issued by DEQ on behalf of EPA which authorizes the storage of specific hazardous waste types at the facility for up to one year. The facility is authorized to temporarily store other hazardous waste types for up to 10 days under the facility's EPA transporter license before it is reloaded to recycling facilities or disposal sites. Metro does not regulate hazardous waste, but the solid waste received at the facility is subject to Metro's requirements.

Safety-Kleen Systems Inc. was founded in the Midwest in the 1950s. The Clackamas Accumulation Center was built in 1988 and was initially permitted as a hazardous waste storage facility in 1990. Clean Harbors, Inc. purchased Safety-Kleen Systems Inc. in 2012. The property is zoned Light Industrial (LI) and the proposed use is allowed in this zone by Clackamas County.

In 2021, Metro learned that the Clackamas Accumulation Center was receiving solid waste for reload to recycling facilities and disposal sites. In October 2021, Metro informed Safety-Kleen that it must apply for a solid waste facility license for the solid waste activities performed at the Clackamas Accumulation Center by January 2022. Safety-Kleen failed to submit a license application by the due date and Metro issued Notice of Violation No. NOV-441-22 to the company with a civil penalty of \$360. The NOV specified, in part, that the facility must apply for and obtain a facility license and a portion of the penalty amount would be used to satisfy the requisite application fee.

Metro held a pre-application meeting with Safety-Kleen on March 8, 2022. Metro allowed the Clackamas Accumulation Center to continue to operate during the licensing process as long as the facility submitted its application by May 16, 2022 and complied with Metro's application requirements. Safety-Kleen submitted its application to Metro in a timely manner as required under the NOV and the application was deemed complete on Aug. 15, 2022.

PUBLIC NOTICE AND OPPORTUNITY TO COMMENT

On Sept. 1, 2022, Metro issued public notice and provided the public an opportunity to review and comment on the license application for 30 days. A description of the proposed facility and the license application was available on Metro's website. Interested parties could submit comments via an online form or leave a voicemail on a multi-language phone line. Postcards with information in six languages about the proposed license and comment period were mailed to 115 businesses, residents and owners of properties located within approximately one-quarter mile of the facility. Notice was also emailed to community-based organizations and neighborhood associations located in the vicinity of the facility, local governments, members of the solid waste industry, and other parties with general interest in solid waste issues. The public comment period ended on Sept. 30, 2022. Metro did not receive any comments regarding this license application.

METRO CODE LICENSE REQUIREMENTS

Safety-Kleen participated in a pre-application conference, submitted a complete license application to Metro, and paid the appropriate application fee as required by Metro Code Chapter 5.01.

Pursuant to Metro Code 5.01.070, a license application must include the following information:

- (1) *Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the license term;*

The applicant has provided documentation demonstrating that it meets Metro's insurance requirements.

- (2) *A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;*

The applicant has submitted a copy of each of the following permits that the facility holds:

- Solid Waste Transfer Station Permit No. 1621 issued by DEQ, expires July 2, 2029.
- Hazardous Waste Storage Permit No. ORD 981766124, issued by DEQ on behalf of the EPA, expires Aug. 26, 2029.
- Industrial Stormwater Discharge General Permit 1200-Z No. 102806 issued by DEQ, expires June 30, 2026.

- (3) *A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the costs of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;*

DEQ requires a closure plan for the facility as well as financial assurance for the cost of the closure. The applicant has provided a copy of the closure plan required by the hazardous waste storage permit, closure estimates for both the RCRA permit and DEQ solid waste permit, and the closure insurance policy covering the estimated closure costs.

- (4) *Signed consent by the property owner(s) agreeing to the proposed property use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the license or refuses any license renewal;*

The applicant is the owner of the property, and a signed consent form is not necessary in this instance.

- (5) *Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and*

The applicant provided a copy of a Land Use Compatibility Statement signed by a representative of the Clackamas County stating that the proposed use of the site is allowed outright per a conditional use permit issued for the site in 1991.

- (6) *Any current permit and a list of anticipated permits that a governmental agency may require. If the applicant has previously applied for a permit, the applicant must provide a copy of that permit application and any permit that any other government agency granted.*

The facility holds three permits related to the activities at this facility which are described in section (2) above.

COMPLIANCE HISTORY OF THE APPLICANT

When evaluating a license application, Metro considers an applicant's compliance history with Metro and other regulatory entities like DEQ and local jurisdictions.

In 2021, Metro discovered that Clean Harbors, Safety-Kleen's parent company, transported 569 tons of solid waste generated in the Metro Area to Covanta Marion in Marion County for disposal between Jan. 1, 2019 and Sept. 30, 2021 without a required non-system license. Clean Harbors paid \$17,435.33 on Dec. 31, 2021 for delinquent fees and taxes due to Metro related to this waste. As a result of that investigation, Metro learned that the Clackamas Accumulation Center receives and reloads non-hazardous solid waste for transport to recycling and disposal sites.

On Oct. 27, 2021, Metro informed Safety-Kleen via email that it must participate in a pre-application conference and submit a solid waste facility license application for the Clackamas Accumulation Center by no later than Jan. 14, 2022, and that failure to comply with this date would result in an enforcement action including imposition of monetary penalties. Safety-Kleen did not meet this initial deadline and Metro issued Notice of Violation No. NOV-441-22 to Safety-Kleen Systems, Inc. on Feb. 16, 2022 for operating an unauthorized solid waste facility, with a civil penalty of \$360. Safety-Kleen paid the penalty amount, of which \$300 was applied towards the license application fee, and completed the required corrective actions which were to (1) provide access to inspect the facility, (2) participate in a pre-application conference, and (3) submit a solid waste facility license application. Safety-Kleen has completed all corrective actions for this NOV.

In addition to the waste transported to Covanta as described above, Clean Harbors self-disclosed to Metro that between Jan. 1, 2019 and Dec. 13, 2021, Clean Harbors and its affiliated companies transported 10,343 tons of solid waste to various non-system disposal sites outside of the region without the required authorization or paying the required fees and taxes. On Nov. 1, 2022, Metro informed Clean Harbors that it owes \$330,797.64 in delinquent fees and taxes for that period and must apply for and obtain a non-system license. Clean Harbors has been cooperative and continues to work with Metro to bring its waste transport operations into compliance.

On Jan. 25, 2019, DEQ issued a Notice of Civil Penalty Assessment and Order to Safety-Kleen Systems, Inc. that included a civil penalty of \$260,900. DEQ cited several violations at the Clackamas Accumulation Center that were associated with financial assurance; insurance; compliance with hazardous waste management, labeling, storage, record keeping and reporting requirements; and operating a solid waste facility without a DEQ solid waste permit. Safety-Kleen Systems Inc. subsequently filed a request for a hearing and penalty mitigation and DEQ dismissed certain violations reducing the penalty to \$180,100. Safety-Kleen opted to proceed with a contested case hearing before an administrative law judge and the case is still in process. The facility has since applied for and obtained a DEQ solid waste disposal site permit. Most of the violations cited by DEQ were related to hazardous waste operations. Metro does not regulate hazardous waste and the applicant is currently working with DEQ to resolve the outstanding issues. Staff will continue to monitor this matter and coordinate with DEQ as needed.

DEQ stormwater compliance staff reported to Metro that the facility received a warning letter in September 2018 related to missed and improper monitoring as reported in the facility's 2017-2018 Industrial Stormwater Discharge Monitoring Report. The facility is currently in compliance with its 1200-Z stormwater permit.

Clackamas County staff reported to Metro that the facility has not had any violations over the past three years.

STAFF RECOMMENDATION

Staff recommends issuing new Solid Waste Facility License No. L-197-23 to Safety-Kleen Systems, Inc. authorizing the Clackamas Accumulation Center to receive non-hazardous special waste for temporary storage and reloading to permitted recycling facilities and disposal sites. If approved, the proposed license will take effect on Jan. 1, 2023, and expire on Dec. 31, 2027. A copy of the proposed license is attached for your signature.

ATTACHMENT