

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: SAFETY-KLEEN SYSTEMS, INC.

**FILE NOs.: OCI-WP-15-1
and RIPDES RIG250022**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM’s jurisdiction.

B. Facts

- (1) The Respondent is the holder of Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit No. RIG250022 (the “Permit”). The Permit was issued to the Respondent by the DEM on 17 December 2013 and became effective on that date. The Permit authorizes the Respondent to discharge non-contact cooling water from its facility at 167 Mill Street in the city of Cranston, Rhode Island to the Pawtuxet River.
- (2) The Permit requires the Respondent to summarize monitoring results obtained during the previous quarterly period and report these results to the DEM in a Discharge Monitoring Report (“DMR”) that must be postmarked no later than the 15th day of the month following the completed reporting period.
- (3) The Respondent failed to timely submit DMRs in accordance with the Permit for 3 quarterly periods as summarized in the following table:

QUARTERLY PERIOD	DUE DATE	SUBMISSION DATE
4/1/13 to 6/30/13	7/15/13	11/5/13
4/1/14 to 6/30/14	7/15/14	9/19/14
7/1/14 to 9/30/14	10/15/14	Not yet submitted

- (4) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to submit the DMR for the quarterly period from 1 July 2014 to 30 September 2014, which constitutes an ongoing violation of the DEM’s *Regulations for the Rhode*

Island Pollutant Discharge Elimination System (the "RIPDES Regulations") and the DEM's Water Quality Regulations.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM's Water Quality Regulations, Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (2) **DEM's RIPDES Regulations**
 - (a) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Rule 14.17(d)** – requiring the permittee to report monitoring results at the intervals specified in the permit.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 15 days receipt of this NOV**, submit the following to the DEM's Office of Water Resources – RIPDES Program:
 - (a) The DMR for the quarter period ending on 30 September 2014; and
 - (b) A statement identifying the cause/s of the reporting violations and steps the Respondent has taken to ensure that all future DMRs are submitted to the DEM by the due date specified in the Permit.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Two Thousand Seven Hundred and Fifty Dollars (\$2,750)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of this NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and

shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903
 - (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607 extension 2302. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 extension 7119.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

SAFETY-KLEEN SYSTEMS, INC.
c/o CT Corporation System, Registered Agent
450 Veterans Memorial Parkway, Suite 7A
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: OCI-WP-15 – 1 and RIPDES RIG250022
 Respondent: SAFETY-KLEEN SYSTEMS, INC.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) and C (2)– Failure to timely submit DMRs	Type III (\$6,250 Max. Penalty)*	Moderate	\$1,250	2 violations	\$2,500
C (1) and C (2)– Failure to timely submit DMRs	Type III (\$6,250 Max. Penalty)*	Minor	\$250	1 violation	\$250
SUB-TOTAL					\$2,750

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that the Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS= \$2,750

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit timely DMRs

VIOLATION NO.: C (1) and C(2)

TYPE		
<u> </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	<u> X </u> TYPE III INCIDENTAL to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to submit the DMRs by the due date specified in the permit for the quarters ending 30 June 2013 and 30 September 2014. The timely submission of the DMRs is important to the program.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: For the DMR for the quarter ending 30 June 2013, the duration of the violation was greater than 3 months (DMR submitted 15 November 2013), which extends beyond the subsequent reporting period. To date, the DMR for the quarter ending 30 September 2014 has not been submitted, which is greater than 3 months and extends beyond the subsequent reporting period.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondent did not take steps to prevent the non-compliance. The Respondent mitigated the noncompliance for one of the DMRs by submitting the DMR; however, it has failed to submit the DMR for the quarter ending 30 September 2014. The Respondent has failed to submit timely DMRs despite repeated telephone calls from the DEM reminding the company of its obligation to do so.</p> <p>(H) Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce: Considered, but not utilized for this calculation.</p> <p>(I) The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable: The Respondent has complete control over the violation, the violation was foreseeable, and the Respondent is aware of the action necessary to correct the violation.</p> <p>(J) Any other factor(s) that may be relevant in determining the amount of a penalty: The Respondent was issued a letter by the DEM on 12 September 2013 for failure to timely submit the DMRs due on 15 July 2013. Additionally, the DEM discussed the need to timely submit the DMRs with the Respondent by telephone on 30 October 2013 and 17 September 2014. The DEM informed the Respondent through the letter and the telephone conversations that continued late submission of the DMRs would result in a referral for formal enforcement.</p>		
MAJOR	<u> X </u> MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,250
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit timely DMRs

VIOLATION NO.: C (1) and C(2)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to submit the DMR by the due date specified in the permit for the quarter ending 30 June 2014. The timely submission of the DMRs is important to the program.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: For the DMR, the duration of the violation was less than 3 months (DMR submitted 19 September 2014), which is within the subsequent reporting period.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondent did not take steps to prevent the non-compliance. The Respondent mitigated the noncompliance by submitting the DMR.</p> <p>(H) Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce: Considered, but not utilized for this calculation.</p> <p>(I) The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable: The Respondent has complete control over the violation, the violation was foreseeable, and the Respondent is aware of the action necessary to correct the violation.</p> <p>(J) Any other factor(s) that may be relevant in determining the amount of a penalty: The Respondent was issued a letter by the DEM on 12 September 2013 for failure to timely submit the DMRs due on 15 July 2013. Additionally, the DEM discussed the need to timely submit the DMRs with the Respondent by telephone on 30 October 2013. The DEM informed the Respondent through the letter and the telephone conversation that continued late submission of the DMRs would result in a referral for formal enforcement.</p>		
MAJOR	MODERATE	<u> X </u> MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
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	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250 \$250