



SPECIAL HEARING
2/3/05
cc: BD, DI, DWQ
e-cys: BD, CC, HMS, TH, CMW

Date: February 2, 2005

Ms. Debbie Irvin, Clerk to the Board
State Water Resources Control Board
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P.O. Box 100
Sacramento, California 95812-0100

Subject: Safety Kleen Systems Inc. Comments on the 2004 Draft Storm Water General Permit

Section II.3: Effluent Limitations- States that “dischargers shall reduce or prevent pollutants in storm water and/or authorized non-storm water discharges through controls that meet BAT for toxic and non-conventional pollutants, and BCT for conventional pollutants. Development and implementation of a SWPPP that complies with the requirements in Section VII (SWPPP requirements) and that includes BMPs that achieve BAT/BCT constitute compliance with this requirement.”

The fact sheet (page VII) equates the EPA Benchmarks to a measure of BAT/BCT. While the permit states benchmarks are not intended to be served as effluent limits and exceeding benchmark values is not a violation of the permit, no language exists that clarifies that exceeding the benchmark does not mean that the discharger has failed to meet BAT/BCT.

Safety-Kleen supports the concept of performance benchmarks as a tool to measure BMP effectiveness, and only if applied in the same manner and intent that EPA applies the benchmarks, but not as a measure of compliance. We recommend that the Board clearly states that exceedance of an EPA Benchmark is not considered a violation of the BAT/BCT requirements.

Section III: Receiving Water Limitations- States:

Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not contain pollutants that cause a nuisance.

2. Storm water discharges and authorized non-storm water discharges shall not contain pollutants that cause or contribute to an exceedance of any applicable water quality objectives or water quality standards (collectively, WQS) contained in a Statewide Water Quality Control Plan, the California Toxics Rule, the National Toxics Rule, or the applicable RWQCB's Water Quality Control Plans (Basin Plan).

This is a change from the 1997 permit and previous draft permit language stating that the storm water discharge cannot “cause or contribute”. This language change establishes liability to dischargers.

The previous Receiving Water Limitations (RWLs) language protected the dischargers from being in violation as long as they were actively engaged in the iterative process. The 2004 draft General Permit now requires the discharger to engage in the iterative process if the discharge contains pollutants and is in violation of the RWL. The iterative process has



essentially been removed as a proactive step to keep a discharger from being in violation of the permit to a reactive step in response to a permit violation.

Safety-Kleen recommends the previous RWLs Language be carried forward for the following reasons:

- 1 The iterative process is the primary mechanism for storm water quality management and permit compliance, dischargers should not be found in violation of the RWLs as long as they implement BMPs that achieve BAT/BCT and actively follow the iterative process as outlined in the previous RWLs.
2. There is no statewide guidance that identifies how industrial dischargers or the regulators determine if an industrial storm water discharge contains pollutants that are causing or contributing to an exceedance of any applicable water quality objectives or WQSS. Therefore, there is no guidance to determine if one is clearly in violation of RWLs.

Section V: Provisions

Section V.6 states “upon determination by the dischargers or written notification by the RWQCB that storm water discharges and/or authorized non-storm water discharges contain pollutants that are in violation of RWLs, discharges shall implement corrective actions that include an assessment of the SWPPP.” Based upon the facility’s assessment, the discharger must certify that either:

- Additional BMPs and/or SWPPP implementation measures are required to prevent or reduce pollutants in storm water discharges to meet RWLs, or
- No additional BMPs and/or SWPPP implementation measures are necessary to prevent or reduce pollutants in storm water discharges to meet RWLs, or
- There are no sources of the pollutants at the facility.

There is no consideration of background levels or off-site pollutant sources that impact storm water discharges. The draft permit’s definition of storm water discharge associated with industrial activity makes it clear that the discharger is only responsible for sources of storm water pollutants that is directly related to the industrial activity and for which the discharger has control over. This lack of consideration of background and/or off-site pollutant sources is punitive to the discharger and makes the discharger responsible for sources of pollutants that the discharger has no control over. Safety-Kleen recommends that language be incorporated into the permit that reiterates the dischargers’ responsibilities and allows for consideration for off-site or background pollutant sources.

Section V.7.c.iii requires that when analytical results exceed the USEPA benchmark values in Table VIII.2, the discharger shall certify, based upon the facility evaluation, there are no sources of the pollutants at the facility. The discharger cannot make this certification. The discharger’s obligation is to control the discharge of site-specific and industry-specific pollutants that the discharge has control over, to economically achievable levels (e.g. there are always sources of suspended solids). Safety-Kleen recommends that the dischargers be required to only certify that to the best of their knowledge, the BMPs meet BAT/BCT for the site-specific pollutants.

Section V.7.c.iv requires that the above certification show how the benchmark exceedance occurred and why it will not occur again under similar circumstances. This certification is impossible due to the off-site pollutant sources and background levels that would be out of control of the discharger. Safety-Kleen recommends that this language be removed.

Sections VIII.4.f and V.7.e-g require that if a USEPA benchmark value is exceeded, the discharger collect samples from the next storm events until two consecutive samples do not exceed the benchmark value, prepare and submit a report to the RWQCB describing the facility evaluation and the BMPs and corrective actions that are currently being implemented and/or additional BMPs and corrective actions that will be implemented to assure compliance with the benchmark values along with the implementation schedule. The discharger must submit written report to the RWQCB within 30 days for approval. Within 14 days following approval of the report by the RWQCB, the discharger must revise the SWPPP and monitoring program to incorporate the approved BMPs and corrective actions that have been and will be implemented, and the implementation schedule not exceeding 90 days from the date of determination of the exceedance of the benchmark.

If it is assumed that the benchmark is exceeded due to inadequate BMPs or SWPPP implementation, then requiring additional sampling before the corrective measures are identified serves no purpose and is only punitive in nature. If sampling of the following two storm events show that the benchmark is not exceeded and the corrective measures have not been identified or implemented, that would indicate that the BMPs and SWPPP were adequate without implementation of additional BMPs or corrective actions.

There must be a time limit placed on the regional boards to respond. The 90-day compliance period must only apply once the RWQCBs have approved the corrective action report and the additional sampling requirements must only apply once the corrective BMPs have been implemented.

Section V.7.h states “Nothing in this section shall prevent the appropriate RWQCB from enforcing any provisions of this General Permit while dischargers prepare and implement the above report”.

This language makes it clear that there is no longer any “safe harbor” and kills the BMP iterative process approach. We recommend eliminating Section V.7.h. Alternatively, since the inclusion of numeric performance standards is a new element, allow dischargers up to 3 years to meet benchmark numeric requirements for treatment and structural controls. This is the time frame originally provided for in the 1992 general permit.

In general, Safety-Kleen supports the application of assessing BMP effectiveness and the iterative approach as the mechanism for demonstrating permit compliance since this concept of the iterative process for BMP development and SWPPP compliance has been the cornerstone of the permits and the SWPPP management process. Therefore, we recommend that Section V.7 of the draft permit be eliminated. The permit, consistent with the BMP iterative approach, should require that dischargers, as part of their annual report, document and demonstrate that an exceedance of a benchmark has been investigated and monitored and to provide documented justification that either the exceedance has been mitigated (if it is determined that the exceedance is a consequence of inadequate BMP and/or SWPPP development or implementation), or that the exceedance is not a consequence of site/industry-specific activities.

Section VII.8.a- Minimum BMPS

Section VIII.a.i (1) requires, as part of implementation of minimum BMPs, weekly inspection of all outdoor areas associated with industrial activities to determine housekeeping needs. Safety-Kleen has invested a great deal of time and money into their facilities for the specific purpose of improving storm water discharges specially identifying their housekeeping needs. Specific

examples include installing canopies and covers over materials storage areas, improving good housekeeping practices, implementing material handling practices to reduce the exposure of our materials with storm water, developing employee training programs and employee awareness of the benefits of storm water protections, and sweeping outside areas prior to the wet season. The weekly inspection of outdoor areas is burdensome since housekeeping needs have been the first controlling measure that dischargers have been continuously evaluating. We recommend, eliminating this requirement.

Sincerely,



Steven Luquire
Steven Luquire
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Director of EHS, Western Region