

TCEQ DOCKET NO. 2006-____-IHW

APPLICATION BY
SAFETY-KLEEN SYSTEMS
IHW PERMIT RENEWAL
NO. 50163

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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

2006 FEB 25 AM 10:39
CHIEF CLERK'S OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

**APPLICANT'S RESPONSE TO REQUESTS
FOR CONTESTED CASE HEARING**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Safety-Kleen Systems, Inc. (the "*Applicant*") files this response to requests for a contested case hearing regarding Applicant's Industrial Hazardous Waste ("*IHW*") permit renewal and amendment ("*Renewal Application*"). The Renewal Application requests renewal of authorization from the Texas Commission on Environmental Quality ("*TCEQ*") to operate and modify an existing industrial, hazardous, and municipal waste treatment, storage, and recycling facility located at 1722 Cooper Creek Road, Denton, Denton County, Texas, referred to as the Denton Recycle Center (*the "Recycle Center"*). For the reasons set forth more fully below, the Commission should deny the requests for hearing in this matter and grant the Renewal Application without further proceedings.

I. BACKGROUND

A. The Recycle Center.

The Recycle Center is a solvent and organic chemical recycling plant designed to receive, store, and process spent organic solvents from Safety-Kleen service centers and from

commercial and industrial generators. The Recycle Center receives wastes from off-site sources, and conducts waste storage and processing.

None of the following activities occur at the Recycle Center:

1. Land disposal of any kind of waste, hazardous or non-hazardous;
2. Burning of hazardous wastes or hazardous waste derived fuels in boilers;
3. Incineration of hazardous wastes;
4. Land treatment;
5. Storage of hazardous wastes in surface impoundments;
6. Underground injection; or
7. Permanent storage of any waste.

B. Time Line of Events.

On March 9, 2004, the TCEQ received Applicant's Renewal Application. Applicant's original IHW permit authorized total storage capacity of 3,046,624 gallons of waste and the construction of numerous storage units.¹ The pending Application to renew the Recycle Center's IHW permit seeks a permit amendment to allow an increase in storage capacity of only 25,520 gallons, for a total capacity of 3,072,144. This represents less than a 1% increase in capacity that will take place in an existing building and in units authorized by the original permit. The Application also seeks authorization to handle certain additional wastes codes compatible with the wastes currently handled by the facility.

The Executive Director declared the Application administratively complete on August 11, 2004. The Applicant published the required "Notice of Receipt and Intent to Obtain an

¹ Note that Applicant has not yet constructed a number of storage units that it already is authorized to construct under the original permit.

Industrial and Hazardous Waste Permit Amendment and Renewal” in the *Denton Record-Chronicle* on August 25, 2004.

On December 13, 2004, a public meeting was held in Denton, Texas. The Executive Director completed its technical review and prepared a final draft permit on September 23, 2005. On December 19, 2005, the “Notice of Application and Preliminary Decision” was published in the *Denton Record-Chronicle*. The Executive Director received requests to hold a second public meeting, which it held on March 28, 2006. The public comment period ended on that date. Approximately forty five members of the public provided oral comments at the public meeting in Denton. Several commenters were in favor of the project. No commenters or requestors have withdrawn their comments or requests.

The Executive Director filed its “Response to Public Comment” with the Chief Clerk on September 27, 2006. The Executive Director made no changes to the draft permit.

Three letters from individuals, dated October 17, 2006, October 18, 2006, and October 23, 2006, respectively, and one letter purporting to be from a group dated October 24, 2006, were submitted to the Chief Clerk.² Each letter requested a contested case hearing. The requests for contested case hearing are the subject of this briefing. For purposes of this brief, a “requestor” refers to a person or group requesting a contested case hearing by one of these four letters.

C. Summary of Argument.

The Commission should deny each request for a contested case hearing in this matter because: i) the requestors have not claimed any personal interests that are the subject of this

² Exhibits 1, 2, 3 and 4.

law applicable to the IHW permit proceeding (i.e. the requestors have no justiciable interest in the proceeding); and, ii) the issues on which the hearings are requested are not relevant or material to this proceeding. Furthermore, the Commission is authorized to, and should, grant the pending Application without further proceedings.

II. APPLICABLE LEGAL STANDARD

The requests for a contested case hearing here are measured against the requirements of the Texas Water Code as codified in Texas Administrative Code (“TAC”), Title 30, Chapter 55 (the codified regulations in this Chapter are sometimes hereinafter referred to as the “TCEQ Rules”).³ In determining whether a hearing is appropriate, the Commission must conduct a two-step inquiry. The threshold determination for the Commission is whether a party meets the definition of an “affected party.” Only an “affected party” may have a right to a hearing. In step two, even a qualified “affected party’s” request for a hearing must be analyzed by the Commission to determine whether the “affected party” has raised a material and relevant issue for determination. If no material and relevant issue is raised, the Commission should deny an “affected party’s” request for a hearing.

A. Affected Party Status

Here each requestor is eligible to try and establish himself or herself as an “affected person.”⁴ An “affected person” is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.”⁵ An interest

³ 30 TEX. ADMIN. CODE §§ 55.200-211 (2008).

⁴ 30 TEX. ADMIN. CODE § 55.201(b) (2008).

⁵ 30 TEX. ADMIN. CODE § 55.203(a) (2008).

common to members of the general public does not qualify as a personal justiciable interest.”⁶ Interests common to the community **do not** support individual standing because those interests do not qualify an individual as an affected person.

The TCEQ’s regulations establish the factors to be considered in determining whether a person is affected.⁷ Here, the relevant factors include:⁸

1. **“Whether the interest claimed is one protected by the law under which application will be considered.”**⁹ The Texas Solid Waste Disposal Act industrial and hazardous waste permit program, and related regulations, are the “law applicable to this application.” Concerns with storm water discharges and permitting under the Texas Water Code, air emissions, so-called “vulnerability zones,” and Risk Management Plans under the federal or state Clean Air Act, terrorism and catastrophe planning, property value or other economic issues are not interests protected by the law applicable to the Application.
2. **“Whether a reasonable relationship exists between the interest claimed and the activity regulated.”**¹⁰ An interest claimed must be personal, briefly described in writing, and the relationship of that personal interest to the regulated activity must be established.

⁶ 30 TEX. ADMIN. CODE § 55.203(a) (2008).

⁷ 30 TEX. ADMIN. CODE § 55.203 (2008).

⁸ The other factors listed are not relevant or do not otherwise relate to the specific issues raised by the requestors and, therefore, are not discussed herein.

⁹ 30 TEX. ADMIN. CODE § 55.203(c)(1) (2008).

¹⁰ 30 TEX. ADMIN. CODE § 55.203(c)(3) (2008).

3. **The “likely impact” of the regulated activity on the personal health and safety of the requestor.**¹¹ There is no presumption of “likely impact” in the Texas Solid Waste Disposal Act or TCEQ regulations for persons residing within any given distance from an existing facility, and this standard is more stringent for the requestor than “potential impact” or “conceivable impact.” The activity must have a reasonably predictable adverse affect on the person seeking affected party status. A general worry, a “NIMBY” claim or question, or a concern with no factual support is legally insufficient. The Commission may grant a hearing request only when the request satisfies the requirements of Chapter 55 of the Commission rules and the applicable provisions of the Texas Water Code.¹² Generalized objections to the permit cannot form the basis for a hearing request.¹³ The Commission is legally obligated to deny all such requests.

As explained below in detail, the requestors fail to meet the relevant factors to support a determination that they are “affected persons.” Every issue raise in the hearing requests was raised in public comment. The Executive Director’s Response to Comments responded to each and every issue raised, and found - **in every single case** - that the Renewal Application met the legal standards within the jurisdiction of the TCEQ in this matter. None of the requestors have: i) expressed a personal concern or interest that is protected by the law under which the Application will be considered; ii) established reasonable connection between the interests

¹¹ 30 TEX. ADMIN. CODE § 55.203(c)(4) (2008).

¹² TEX. ADMIN. CODE Ch. 55 (2008).

¹³ 24 TEX. REG. 9030., 1999 WL 961991 (TEX. REG.).

claimed by the requestors and the activity regulated by the Renewal Application permit; and, iii) demonstrated (or even attempted to demonstrate) a likely impact of the activity regulated by the Renewal Application permit on the personal health or safety of the requestors. As shown below in Section III, the Executive Director's Response to Comments readily support this conclusion.

B. Relevant and Material

Even if a party can demonstrate that it is an "affected person," the TCEQ Rules specify that a hearing is not required **unless**, among other things, the issues raised by the affected person were issues of fact raised during the public comment period and are **relevant and material** to the Commission's decision on the Renewal Application.¹⁴ As shown below, no issues relevant and material to the Commission's decision on the Renewal Application have been raised by the requestors, and Executive Director's Response to Comments readily support this conclusion.

III. RESPONSE TO REQUESTS

The TCEQ Chief Clerk received four letters requesting a contested case hearing.¹⁵ Three of the letters are from four individuals. The fourth letter purports to be from a group called Citizens for Healthy Growth ("CHG"), claiming to represent the 4 individuals who separately sent requests, and repeating the concerns therein. All of the issues raised by the hearing requests were raised in some form during the public comment period and are the

¹⁴ 30 TEX. ADMIN. CODE §55.211(c)(2)(A) (2008).

¹⁵ Exhibits 1, 2, 3, and 4.

subject of discussion in the Executive Director's Response to Public Comments.¹⁶ This brief will address each request individually below.

As a threshold and global point applicable to all of the hearing requests, the Applicant notes that the issues on which a hearing has been requested are not related to the IHW permit that is the subject of this proceeding. Even if a hearing is granted, there is no legal basis for granting any of the requested relief in this type of proceeding. As an example, the requestors have a generalized fear of catastrophes.

Public commentators articulated this as a fear of, *inter alia*, terrorist attacks. Presumably in relation to their fear, the requestors also want the Recycle Center to be responsible for an off-site evacuation plan – notwithstanding the fact that only the governmental first-responders, such as the City of Denton, have authority to evacuate people from their homes. The Commission cannot and does not purport to address these types of concerns in renewing a recycling facility's industrial and hazardous waste permit. A contested case hearing on such issues would be inappropriate and a waste of resources for all concerned, with no possibility of a resolution of such issues.

Unsubstantiated and generalized fears will not confer "affected party" status on a person. In *Collins v. Tex. Natural Res. Conservation Com'n.*, 94 S.W.3d 876, 882 (Tex. App. – Austin, 2002, no pet.) no writ, the Commission denied a nearby landowner's hearing request in a application proceeding to permit waste management lagoons at a poultry operation. The Commission determined that the requestor, who lived 1.3 miles from the applicant's property, was not an "affected person." The requestor claimed that the clay liners of the proposed

¹⁶ The other requirements of 30 TAC § 55.209 will be addressed in the discussion of the issues.

lagoons would fail, and the failure would be of such magnitude as to contaminate his groundwater. The Court found that such a future, predicted event was unsupported and thus, the Court found that the Commission was well within its discretion to find the requestor not to be an affected person. The requestors in this proceeding have raised similarly unsupported predictions about impacts from potential fires and groundwater issues.

A. E. Parks Olmon and Delores Olmon (collectively the "Olmons")¹⁷

The Olmons are not "affected persons" as defined by the TCEQ Rules. They have raised only questions of law or policy and all of the issues raised by the Olmons are disputed by the Applicant. The Olmons raised these issues in public comment, and the Executive Director fully responded to each of these issues. None of the issues raised are relevant or material to this Application.

To summarize the issues, the Olmans state their belief that they are affected persons due to the proximity of their home and water wells to storm water "discharge areas" of the Applicant, and the proximity of their home to the Recycle Center.¹⁸ They specifically request a hearing on the following:

1. In the event of a catastrophic accident, the possibility of contamination in their water well.
2. Lack of potential catastrophic risk planning in the Applicant's contingency plan.

¹⁷ We note that Mr. and Mrs. Olmon also requested a contested case hearing in January 2004 on the renewal of Applicant's Air Permit No. 2613. In those requests, Mr. and Mrs. Olmon raised emissions concerns similar to the issues raised by them in this proceeding. On May 25, 2005, the Commission denied Mr. and Mrs. Olmon's hearing requests as a matter of law and granted the renewal of Air Permit No. 2613. See Docket No.2004-1930-AIR.

¹⁸ Exhibit 1.

Finally, the Olmans attempt to request a hearing “on every issue raised in public comment, not just those raised by us,” and “every issue to which the Executive Director responded.” The Olmans do not provide any information about those issues, nor any statement that such issues personally affect the Olmans. This generalized reference clearly fails to meet the criteria of 30 Tex. Admin. Code §55.201(d)(2) and the hearing request based thereon must be denied. Without regard to viability of the Olman’s generalized reference, in response, the Applicant incorporates by reference the Executive Director’s Responses to Comments.

Both of the issues on which the Olmans request a hearing are related to potential, unlikely catastrophes. The Executive Director specifically notes in Response 14:

State and federal regulations do not require the facility’s contingency plan to include plans specifically for responding to a catastrophe.

Additionally, with respect to a potential impact on a water well, the Executive Director stated that the possibility of a release to groundwater is “unlikely” due to the safety measures at the facility. See Executive Director’s Response 23. The Executive Director elaborates on this point:

First, if the final permit is issued, the permit would authorize Safety-Kleen to manage waste only in above ground tanks. The permit would not authorize land disposal at the facility, and waste would not come in contact with soil. Second, a licensed professional engineer evaluated and approved the tank designs and specifications. Safety-Kleen must keep tanks in good condition and inspect the tanks regularly. Third, all tanks and container storage areas are located with a secondary containment system, which prevents any release outside the contamination area. Potential releases from containers and tanks would flow into the secondary containment system. The sumps in the secondary containment system would remove the waste. Safety-Kleen must promptly remove the waste from the sumps and reclaim that water or dispose of the waste off-site.

The Olmons are aware of these responses by the Executive Director, having referenced same in their request for a hearing.¹⁹ These responses inform the Olmons that: i) in fact, a contingency plan and emergency response capabilities on site do exist, making their issue on same moot; ii) as a matter of law, the Applicant is not required to perform a catastrophe analysis; and, iii) there is no likely impact to groundwater by the regulated activity. The Olmons have expressed no dispute with the response of the Executive Director. For all of the reasons above, no contested case hearing is warranted on the Olmon's request.

B. Dee Wooten²⁰

Dee Wooten is not an "affected person" as defined by the TCEQ Rules. Wooten has raised only questions of law or policy, and all of the issues raised by Wooten are disputed by the Applicant. According to the Executive Director's Response to Public Comments, Wooten did not participate in any of the public meetings or make any comments during the more than 2 year period of due process on the Application. Wooten's request for a contested case hearing represents her first appearance in this proceeding. To the extent that issues similar to Wooten's issues were raised in public meetings, however, the Executive Director responded fully to those issues, and the Applicant will respond herein. Similar to the other requestors, none of the issues raised by Wooten are relevant or material to this Application.

¹⁹ *Id.*

²⁰ We note that Mrs. Wooten also requested a contested case hearing in January 2004 on the renewal of Applicant's Air Permit No. 2613. In that request, Mrs. Wooten raised emissions concerns similar to the issues raised by her in this proceeding. On May 25, 2005, the Commission denied Mrs. Wooten's hearing request as a matter of law and granted the renewal of Air Permit No. 2613. See Docket No.2004-1930-AIR.

To summarize the issues, Wooten states her belief that she is an affected person, and specifically raises three issues on which she requests a hearing:²¹

1. Wooten seeks a hearing to discuss “dangers to the community” posed by increased storage volume.
2. Wooten seeks a hearing to discuss “dangers to the community” posed by Applicant’s compliance history relating to spills and fires.
3. “[I]n the interest of public health,” Wooten seeks permit provisions relating to contingency plans, emergency response capabilities on site, and “plans for protecting me and my family.”

Finally, Wooten attempts to request a hearing “on every issue raised in public comment, not just those raised by me,” and “every issue to which the Executive Director responded.” Wooten does not provide any information about those issues, nor any statement that such issues personally affect her. This generalized reference clearly fails to meet the criteria of 30 Tex. Admin. Code §55.201(d)(2) and the hearing request based thereon must be denied. Without regard to the viability of Wooten’s generalized reference, in response the Applicant incorporates by reference the Executive Director’s Responses to Comments.

Wooten’s contested case hearing request should be denied because Wooten is not an “affected person.” Wooten has raised no justiciable issues that are personal to her. Even while stating that the Recycle Center endangers her family’s health, Wooten states that this same danger is posed to her neighbors. Her hearing request specifically asks for a discussion of “dangers to the community” not dangers to her. She discusses how long her neighborhood has

²¹ Exhibit 2.

been present (long before she herself lived there), and raises “danger to us and our neighbors.” (We note that Wooten’s uses the term “danger” without ever identifying what type of danger or how it would arise.) She also appears to believe that everyone living within a “2.4 mile vulnerability zone,”²² including herself and her family, is entitled to permit amendments that are “in the interest of public health.” Consequently, she has raised exclusively issues that are common to the community.

Although Wooten also raises the fact that she and her family have health issues (e.g. allergies, respiratory problems, and one member with a traumatic brain injury), she does not claim that the Applicant has contributed, or is contributing, in any way to these health issues. In fact, the records of the Denton County Central Appraisal District indicate that Ms. Wooten purchased her current residence in 1999, apparently voluntarily choosing to move her family within a ½ mile of the Recycle Center approximately 24 years **after** the Recycle Center began its operations, and several years after the issuance of the initial IHW permit. Wooten generally discussed “past spills and fires” in her letter, but does not speculate about future events or about how fires or spill could hypothetically impact her. She does not mention any likely pathway for any material from the Recycle Center to reach her house. She also does not even attempt to suggest a link between her family’s health issues and the Recycle Center. Since this proceeding involves a IHW permit renewal only, the mere fact that Wooten’s family suffers health issues is irrelevant and does not confer upon Wooten “affected person” status.

²² Applicant notes that the concept of a “vulnerability zone” is a theoretical alternative scenario arising from the Clean Air Act § 112(r) Risk Management Plan and has no relevance to the solid waste Application before the Commission.

The Applicant notes the Executive Director's Responses to public comments of others on the following topics: i) increased capacity; ii) spills; iii) contingency plan, including fire contingencies; and, iv) compliance history:

Increased Capacity. The Executive Director notes in Response 8:

When Safety-Kleen originally received Permit No. 50163, the permit authorized (1) total storage capacity of 3,046,642 gallons of waste and (2) construction of specific storage unites. Since receiving its original permit, Safety-Kleen has constructed thirty-seven tanks. Forty-seven tanks are still permitted under the current permit but have not yet been constructed. Safety-Kleen seeks authorization to increase its storage capacity by 25,520 gallons, for a total authorized storage capacity of 3,072,144 gallons. Safety-Kleen does not seek to construct additional storage facilities...The Executive Director evaluated the safety measures in the application, including the training program, emergency response plan, and fire suppression system, and determined that the application complies with regulatory requirements.

Spills. The Executive Director notes in Response 14:

All waste-management units at the facility are located within a secondary containment system designed to prevent release to the environment if a spill occurs. The container storage areas are designed to prevent release to the environment if a spill occurs. The container storage areas are completely enclosed and have a reinforced concrete floor with perimeter curbs. The perimeter of the building is surrounded by curbs at least six inches high or by a six-inch roll bump to contain spills within the building and to prevent storm water run-on. The floor of each module is sloped to a sump along the outer wall.

Contingency Plan. The Executive Director notes in Response 14:

State and federal regulations do not require the facility's contingency plan to include plans specifically for responding to a catastrophe. Safety-Kleen's contingency plan describes the emergency response procedures (including emergency spill control fire control, facility evacuation, and emergency coordinators) as well as the appropriate arrangements Safety-Kleen has made with local authorities for assistance in responding to emergencies. [Footnote reference to Application Section 5.] Safety-Kleen also has detailed procedures on preventing hazards. [Footnote reference to Application Section 6.] The Executive Director evaluated the safety measures in the application and determined that the application complies with regulatory requirements.

Compliance History. The Executive Director notes in Response 25:

The Executive Director prepared and reviewed the facility's compliance history during the period from 1999 through 2004. The Safety-Kleen Denton Recycling Center has a site classification of average and a company classification of average. The company classification is the average of the ratings for all sites Safety-Kleen owns in Texas. All notices of violations with the TCEQ have been resolved. In response to requests from commentors, the Executive Director also reviewed Safety-Kleen's compliance history with the U.S. Environmental Protection Agency. That compliance history includes information from the past three years. The Executive Director determined that Safety-Kleen's compliance history does not warrant denial of this application.

Wooten is aware of these responses by the Executive Director, having referenced same in her request for a hearing.²³ These responses inform Wooten that: i) in fact, a contingency plan and emergency response capabilities on site do exist, making her issue on same moot; and, ii) as a matter of law, the Applicant meets legal requirements for safety relating to the IHW permit renewal. Wooten has expressed no dispute with the response of the Executive Director. For all of the reasons above, no contested case hearing is warranted on Wooten's request.²⁴

C. Joy Powell

Joy Powell is not an "affected person" as defined by the TCEQ Rules. Powell has raised only questions of law or policy and all of the issues raised by the Powell are disputed by the Applicant. Powell raised these issues in public comment, and the Executive Director fully responded to each of Powell's issues. Similar to the other requestors, none of the issues raised by Powell are relevant or material to this Application.

²³ Exhibit 2.

²⁴ Finally, public policy compels denial of Wooten's hearing request. Persons believing they have an interest protected by state law have been given a meaningful opportunity to participate in the Commission's permitting process and have had many opportunities over a more than two-year period to comply with simple legal requirements. Wooten has withheld any expression of her concern until this ultimate proceeding.

In support for Powell's claim that she is an affected person, she raises three facts: i) she lives one quarter mile from the Recycle Center; ii) she has, or had, cancer; and, iii) she has a water well on her property.²⁵ Powell does not claim that her cancer is related to any activities at the Recycle Center or that her groundwater has been affected by activities at the Recycle Center. (In fact, according to the Executive Director's Response to Comments, Powell's home is up-gradient of the Recycle Center. *See* Executive Director's Response to Comments, Response 23 concerning the direction of groundwater flow.

To summarize the issues, Powell (in a letter almost identical to Wooten) states her belief that she is an affected person, and specifically raises three issues on which she requests a hearing:

1. Powell seeks a hearing to discuss "dangers to the community" posed by increased storage volume.
2. Powell seeks a hearing to discuss "dangers to the community" posed by Applicant's compliance history relating to spills and fires.
3. "[I]n the interest of public health," Powell seeks permit provisions concerning contingency plans, emergency response capabilities on site, and "plans for protecting me and my family."

Finally, Powell attempts to request a hearing "on every issue raised in public comment, not just those raised by me," and "every issue to which the Executive Director responded." Powell does not provide any information about those issues, nor any statement that such issues personally affect Powell. This generalized reference clearly fails to meet the criteria of 30 Tex.

²⁵ Exhibit 3.

Admin. Code §55.201(d)(2) and the hearing request based thereon must be denied. Without regard to the viability of Powell's generalized reference, in response, the Applicant incorporates by reference the Executive Director's Responses to Comments.

Powell's contested case hearing request should be denied because Powell is not an "affected person." Powell has raised no justiciable issues that are personal to her. Even while stating that the facility endangers her family's health, Powell states that this same danger is posed to her neighbors. Her hearing request specifically asks for a discussion of "dangers to the community" not dangers to her. She discusses how long her neighborhood has been present, and raises "danger to us and our neighbors." (We note that Powell's uses the term "danger" without ever identifying what type of danger or how it would arise.) She also appears to believe that everyone living within a "2.4 mile vulnerability zone," including her and her family, is entitled to permit amendments that are "in the interest of public health. Consequently, she has raised exclusively issues that are common to the community.

Powell also raises the fact that she has, or had, cancer. She does not claim that the Applicant has any relationship to her health issues. Powell generally raises "past spills and fires," but does speculate about future event or about how fires or spill could hypothetically impact her. She does not mention any likely pathway for any material from the Recycle Center to reach her house. Since this proceeding involves a IHW permit renewal only, the mere fact that Powell has, or had a health issue is irrelevant and does not confer upon Powell "affected person" status.

The Applicant notes the Executive Director's Responses to public comments of others on the following topics: (i) increased capacity, (ii) spills, (iii) contingency plan, including fire contingencies, (iv) compliance history.

Increased Capacity. The Executive Director notes in Response 8:

When Safety-Kleen originally received Permit No. 50163, the permit authorized (1) total storage capacity of 3,046,642 gallons of waste and (2) construction of specific storage unites. Since receiving its original permit, Safety-Kleen has constructed thirty-seven tanks. Forty-seven tanks are still permitted under the current permit but have not yet been constructed. Safety-Kleen seeks authorization to increase its storage capacity by 25,520 gallons, for a total authorized storage capacity of 3,072,144 gallons. Safety-Kleen does not seek to construct additional storage facilities...The Executive Director evaluated the safety measures in the application, including the training program, emergency response plan, and fire suppression system, and determined that the application complies with regulatory requirements.

Spills. The Executive Director notes in Response 14:

All waste-management units at the facility are located within a secondary containment system designed to prevent release to the environment if a spill occurs. The container storage areas are designed to prevent release to the environment if a spill occurs. The container storage areas are completely enclosed and have a reinforced concrete floor with perimeter curbs. The perimeter of the building is surrounded by curbs at least six inches high or by a six-inch roll bump to contain spills within the building and to prevent storm water run-on. The floor of each module is sloped to a sump along the outer wall.

Contingency Plan. The Executive Director notes in Response 14:

State and federal regulations do not require the facility's contingency plan to include plans specifically for responding to a catastrophe.] Safety-Kleen's contingency plan describes the emergency response procedures (including emergency spill control fire control, facility evacuation, and emergency coordinators) as well as the appropriate arrangements Safety-Kleen has made with local authorities for assistance in responding to emergencies. [Footnote reference to Application Section 5.] Safety-Kleen also has detailed procedures on preventing hazards. [Footnote reference to Application Section 6.] The Executive Director evaluated the safety measures in the application and determined that the application complies with regulatory requirements.

Compliance History. The Executive Director notes in Response 25:

The Executive Director prepared and reviewed the facility's compliance history during the period from 1999 through 2004. The Safety-Kleen Denton Recycling Center has a site classification of average and a company classification of average. The company classification is the average of the ratings for all sites Safety-Kleen owns in Texas. All notices of violations with the TCEQ have been resolved. In response to requests from commentors, the Executive Director also reviewed Safety-Kleen's compliance history with the U.S. Environmental Protection Agency. That compliance history includes information from the past three years. The Executive Director determined that Safety-Kleen's compliance history does not warrant denial of this application.

Powell is aware of these responses by the Executive Director, having referenced same in her request for a hearing. These responses inform Powell that: i) in fact, a contingency plan and emergency response capabilities on site do exist, making her issue on the same moot; and, ii) as a matter of law, the Applicant meets legal requirements for safety relating to the IHW permit renewal. Powell has expressed no dispute with the response of the Executive Director. For all of the reasons above, no contested case hearing is warranted on Powell's request.

D. CHG²⁶

As a group, CHG can only maintain affected party status when certain conditions are present. Most importantly, CHG must advance the interests of at least one group member that would, individually, qualify as an affected party. CHG's status, then, is entirely dependent upon the status of the four individuals it cites as affected members: the Olmans, Dee Wooten, and Joy Powell.

²⁶ We note that CHG also requested a contested case hearing in January 2004 on the renewal of Applicant's Air Permit No. 2613. In that request, Ed Soph, on behalf of CHG, raised emissions concerns similar to the issues raised by CHG in this proceeding. On May 25, 2005, the Commission denied CHG's hearing request as a matter of law and granted the renewal of Air Permit No. 2613. See Docket No.2004-1930-AIR.

The CHG letter impermissibly attempts to seek relief for not only four members, but also for schools, housing developments, and the community at large. The CHG letter specifically states that CHG “is an ‘affected person’ because it seeks to protect the same environmental health and public health interests presented by members of the community at the public meetings” on the Renewal Application. The CHG does not attempt to claim that anyone other than the 4 individuals named are members of CHG. Consequently, CHG can neither seek, nor be granted, a contested case hearing for non-group members or for issues that are not personal to members. Again, “[a]n interest common to members of the general public does not qualify as a personal justiciable interest.”²⁷

To enumerate the subject matter of the CHG request, CHG seeks a hearing on every issue raised in public comment, not just those raised by CHG, and every issue to which the Executive Director responded. The CHG letter goes on to repeat the information contained in the hearing requests of the four individual requestors, which CHG states are members. The CHG letter also states that: i) the permit “does not protect the public and environmental health;” and, ii) the Contingency Plan does not contain “plans specifically for a catastrophe.” The letter expresses concerns about compliance history and the capabilities of the City of Denton Fire Department with respect to responding to a fire over six years ago. Finally, CHG cites to the Risk Management Plan prepared by the Recycle Center under Section 112(r) of the Clean Air Act, which contains theoretical air emissions risk analysis alternatives and states that this information should be used to declare everyone living within 2.4 miles of the Recycle Center as an “affected person” in this proceeding.

²⁷ 30 TEX. ADMIN. CODE § 55.203(a) (2008).

The Recycle Center incorporates by reference all of its preceding responses to the individual requestors. In addition, the Recycle Center notes the Executive Director's Responses to public comments of others on the following topics: i) safety measures; ii) spills; iii) contingency plan, including fire contingencies; iv) compliance history; v) evacuation plans; and, vi) terrorist attacks:

Increased Capacity. The Executive Director notes in Response 8:

When Safety-Kleen originally received Permit No. 50163, the permit authorized (1) total storage capacity of 3,046,642 gallons of waste and (2) construction of specific storage units. Since receiving its original permit, Safety-Kleen has constructed thirty-seven tanks. Forty-seven tanks are still permitted under the current permit but have not yet been constructed. Safety-Kleen seeks authorization to increase its storage capacity by 25,520 gallons, for a total authorized storage capacity of 3,072,144 gallons. Safety-Kleen does not seek to construct additional storage facilities...The Executive Director evaluated the safety measures in the application, including the training program, emergency response plan, and fire suppression system, and determined that the application complies with regulatory requirements.

Spills. The Executive Director notes in Response 14:

All waste-management units at the facility are located within a secondary containment system designed to prevent release to the environment if a spill occurs. The container storage areas are designed to prevent release to the environment if a spill occurs. The container storage areas are completely enclosed and have a reinforced concrete floor with perimeter curbs. The perimeter of the building is surrounded by curbs at least six inches high or by a six-inch roll bump to contain spills within the building and to prevent storm water run-on. The floor of each module is sloped to a sump along the outer wall.

Contingency Plan. The Executive Director notes in Response 14:

State and federal regulations do not require the facility's contingency plan to include plans specifically for responding to a catastrophe. Safety-Kleen's contingency plan describes the emergency response procedures (including emergency spill control fire control, facility evacuation, and emergency coordinators) as well as the appropriate arrangements Safety-Kleen has made with local authorities for assistance in responding to emergencies. [Footnote

reference to Application Section 5.] Safety-Kleen also has detailed procedures on preventing hazards. [Footnote reference to Application Section 6.] The Executive Director evaluated the safety measures in the application and determined that the application complies with regulatory requirements.

Compliance History. The Executive Director notes in Response 25:

The Executive Director prepared and reviewed the facility's compliance history during the period from 1999 through 2004. The Safety-Kleen Denton Recycling Center has a site classification of average and a company classification of average. The company classification is the average of the ratings for all sites Safety-Kleen owns in Texas. All notices of violations with the TCEQ have been resolved. In response to requests from commentors, the Executive Director also reviewed Safety-Kleen's compliance history with the U.S. Environmental Protection Agency. That compliance history includes information from the past three years. The Executive Director determined that Safety-Kleen's compliance history does not warrant denial of this application.

Evacuation Plans. The Executive Director notes in Response 15:

The contingency plan includes an evacuation plan for the for the facility. The rules do not require the contingency plan to address evacuation routes within the community.

Terrorist Attacks. The Executive Director notes in Response 18:

TCEQ rules to not require a demonstration of security against terrorist attack and do not specifically address issues related to homeland security or to the issues that arose after September 11, 2001. The Executive Director evaluated the security measures in the application and determined that the application complies with regulatory requirements.

These responses inform CHG that: i) in fact, a contingency plan and emergency response capabilities on site do exist, making the issue on same moot; ii) as a matter of law, the Applicant meets legal requirements for safety relating to the IHW permit renewal; iii) the Recycle Center's compliance history supports issuance of the permit; iv) the TCEQ rules do not require the Recycle Center to have an off-site neighborhood evacuation plan in its contingency plan; and, v) terrorist attacks are outside the consideration of this simple renewal

and the Recycle Center's security measures are within the regulatory requirements. CHG has expressed no dispute with the response of the Executive Director.

The Recycle Center also notes that CHG's statements about fire safety are completely unfounded, unsupported and contrary to the Findings of the Executive Director as provided above. In over 30 years of operations, the Recycle Center has never had a fire with any off-site impacts and never has had a fire-related injury.

CHG's contested case hearing request should be denied because its standing is entirely dependent upon the individual standing of its members. As shown above, none of the individual requestors, who purportedly are the universe of members on whose behalf CHG speaks, are "affected persons." CHG has raised no justiciable issues personal to its members, and seeks to address purported issues that are common to the community at large. For all of the reasons above, no contested case hearing is warranted on CHG's request.

IV. A HEARING IS NEITHER REQUIRED NOR APPROPRIATE

A. None of the Requestors Are An "Affected Person"

As set forth in more detail above, no requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application. Moreover, the requestors explicitly have expressed interests common to members of the general public, which do not qualify, under the TCEQ Rules, as personal justiciable interests.²⁸

²⁸ 30 TEX. ADMIN. CODE § 55.203(a) (2008).

The requestors fail, under the relevant factors set forth in the TCEQ Rules, to assert any interest protected by the Texas Solid Waste Disposal Act and implementing regulations. The requestors fail to demonstrate, or even to assert, that there is a reasonable relationship between the interests claimed and the solid waste activities that are regulated by the Recycle Center's Permit. The requestors fail to explain any likely impact of the solid waste activities at the Recycle Center on the health and safety of the requestors. (Again, this is not supposed to be an exercise in wild theorizing about any conceivable catastrophe, but of a reasonably predictable impact.) Generalized objections to the Recycle Center's Permit cannot form the basis for a hearing request.²⁹ The Commission is legally obligated to deny all such requests.

B. Relevant and Material

The requests amount to nothing more than procedural speed bumps established with the hope that doing so will allow them to receive the unjustified relief they are seeking.

As shown above, no issues relevant and material to the Commission's decision on the Renewal Application have been raised by the requestors, and Executive Director's Response to Comments readily support this conclusion.

C. There is No Appropriate Relief to be Granted in this Proceeding

It is clear that this permit process is not the appropriate venue for resolving the requestors expressed concerns. This process is merely the renewal of an existing permit that allows specific waste management activities only. The Commission must consider whether this limited permit renewal proceeding can address any of the interests of the **requestors** – not

²⁹ 24 TEX. REG. 9030, 1999 WL 961991 (Tex. Reg.).

whether the interests of the requestors are legitimate concerns for citizens of this country at large.

The overriding concerns expressed by the requestors revolve around generalized fear of catastrophic events such as terrorist attacks or complete, instantaneous destruction of the Recycle Center. The unavoidable point here is that the TCEQ IHW permit process is not, in any way, designed to address such global and unpreventable menaces. The fear of catastrophe is not limited to Safety-Kleen's facility for the requestors. The requestors' fears are could be directed at any well-operated business with a IHW permit in this State. The only relief that would seem acceptable to the requestors would be for the Recycle Center to completely disappear. Consequently, the requestors have raised no issue that can be addressed in a contested case hearing on this permit renewal process. Moreover, these catastrophe issues are not personal, individual issues. The TCEQ's regulations clearly state that "[a]n interest common to members of the general public does not qualify as a personal justiciable interest."³⁰

D. Public Policy

Pursuant to 30 Tex. Admin. Code §55.211(b)(3)(B), to the extent that the requests raise only disputed issues of law and policy, the Commission should resolve these issues and act on the application without a contested case hearing. Public policy also requires timely permitting decisions. It is time to conserve Commission resources, deny the requests for hearing, and direct the Executive Director to issue the renewal permit as drafted.

³⁰ 30 TEX. ADMIN. CODE § 55.203(a) (2008).

V. DURATION OF HEARING

Although the Applicant submits that a SOAH hearing on any issues raised in the requestor's hearing requests would be improper, pursuant to 30 Tex. Admin. Code §55.209(e)(7), if the Commission grants one or more of the requests for hearing, the Applicant expects the maximum duration of a SOAH hearing to be five days.

VI. EFFORTS TO WORK WITH REQUESTORS

This is not the first time CHG has attempted to entice opposition to the Permit Renewal. For example, see Exhibit "5," a flier prepared by CHG containing factual inaccuracies such as the title itself which claims that over 3 million gallons of toxic and hazardous waste are headed to Denton permanently. As noted earlier, the Recycle Center does not engage in **any** on-site disposal or permanent storage of waste. The purpose of a publication of this nature could only be to create a sense of hysteria which is wholly unfounded on fact. Regardless of such unfair representations, the Recycle Center has a strong community presence and has continued to work to fairly address concerns raised by the citizens of Denton.

In keeping with this philosophy, on or about January 4, 2007, the Recycle Center sent an identical letter to each Requestor advising of the Recycle Center's desire to understand the Requestor's concerns and "see if we might potentially find a way to address those concerns." See Exhibit "6" containing one of the letters. The letter requested the opportunity to meet with the Requestors, at their homes, at the Recycle Center, or at a neutral location. The letter also offered a tour of the Recycle Center to the Requestors.

On or about January 24, 2007, the Recycle Center received a two-line response dated January 18, 2007, refusing to even speak with the Recycle Center representatives, purportedly on advice of counsel, until after the Commission decided whether to grant the hearing requests. *See* Exhibit "7." The message was loud and clear - the requestors wanted a formal hearing and were not interested in the Recycle Center's voluntary efforts to work with the requestors.

The Recycle Center was not deterred in its desire to seek a mutually satisfactory resolution without any formal settings before the Commission. As such, the Recycle Center sent a follow-up letter asking the Requestors to identify their legal counsel so further contacts could be made. The letter also stated that the invitation to meet and discuss the Requestor's concerns remained open. *See* Exhibit "8." None of the requestors responded to the Recycle Center.

Still undeterred, the Recycle Center spoke with Kyle Lucas, Attorney Mediator in the TCEQ's Alternate Dispute Resolute Program (ADR), to express a desire to enter into voluntary mediation with the Requestors. Upon being contacted by Mr. Lucas, the Requestors consented to participate in a mediation on May 22, 2007 in Denton.

The parties to the mediation are subject to confidentiality rules and agreements concerning the substance of the mediation. Consequently, the Recycle Center can only state that it entered into the process with very high hopes of resolving this matter without the need for formal proceedings before the Commission. The Recycle Center believes that the Executive Director and ADR Program representatives would agree, to the extent that they can comment on these issues, that the Recycle Center has participated with good intentions, an open mind, and good faith. Unfortunately, after the Recycle Center's lengthy and strenuous

efforts to reach a conclusion where the requestors would voluntarily withdraw their hearing requests, the Recycle Center is extremely disappointed to now be back in the position of filing an adversarial pleading before the Commission. It is the Recycle Center's belief, at this time, that the Requestors will not agree to any reasonable compromise, even one which includes concessions going well beyond any legal obligations of the Recycle Center, that would result in their withdrawal of the hearing requests. The requestors want a hearing, not a resolution.

VII. CONCLUSION

No requestor has established standing to request a contested case hearing, as required by 30 Tex. Admin. Code §§ 55.201 and 55.203. The requestors' concerns are either not within TCEQ's authority or they are not relevant and material to the decision whether to grant their contested case hearing requests or to the final decision on the Application itself. There are no interests expressed by the requestors that are justiciable or redressable in the instant proceeding. Therefore, the Commission should deny the requests for a contested case hearing and direct the Executive Director to renew IHW Permit No. 50163.

Respectfully Submitted,



Jean M. Flores
State Bar No. 13755500
Joseph F. Guida
State Bar No. 08593100
Tonya L. Meier
State Bar No. 00797064
GUIDA, SLAVICH & FLORES, P.C.
750 North St. Paul Street, Suite 200
Dallas, Texas 75201
Phone: 214-692-0009
Fax: 214.692.6610

Counsel for Applicant
Safety-Kleen Systems, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of February, 2008, the original and eleven true and correct copies of the Applicant's Response to Hearing Requests were filed with the Chief Clerk of the TCEQ and a true and correct copy was served on all persons listed on the attached Mailing List via hand delivery, facsimile transmission, or by deposit in the U.S. Mail.



Jean M. Flores
Counsel for Applicant
Safety-Kleen Systems, Inc.

October 23, 2006

OPA

OCT 26 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2006 OCT 26 PM 2:32

CHIEF CLERKS OFFICE

LaDonna Castanuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, TX 78711-3087

BY *[Signature]*
[Handwritten initials]

RE: Request for contested case hearing in the matter of the renewal of
TCEQ Permit No. 50163, Safety-Kleen Systems, Inc., Denton Recycle Center,
1702 Cooper Creek Road, Denton, TX 76208.

We are writing to request a contested case hearing on the renewal of TCEQ Permit No. 50163.

We are members of Citizens for Healthy Growth and live approximately one mile east of Safety-Kleen Systems, Inc. We consider ourselves "affected persons" because of the proximity of our water wells to the discharge areas of Safety-Kleen's storm water run-off. We are concerned that, in the event of a catastrophic accident at the facility, toxic run-off could contaminate our water supply.

It is our understanding that Safety-Kleen's current contingency plan does not address this potential risk. The renewal of their Permit No. 50163 should not be granted until it does.

We also consider ourselves "affected persons" because we live within the 2.4 mile vulnerability zone established by Safety-Kleen's Risk Management Plan.

This hearing request also seeks a hearing on every issue raised in public comment, not just those raised by us. This request includes every issue to which the Executive Director responded.

Sincerely,

[Signature: E. Parks Olmon]

[Signature: Delores Olmon]

E. Parks Olmon
4401 University Drive
Denton, TX 76208
940-383-3881

4401 East University Drive

October 18, 2006

LaDonna Castanuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, TX 78711-3087

43815
11/2/06

OPA

OCT 24 2006

BY 

RE: Request for contested case hearing in the matter of the renewal of
TCEQ Permit No. 50163, Safety-Kleen Systems, Inc., Denton Recycle Center,
1702 Cooper Creek Road, Denton, TX 76208.

I am writing to request a contested case hearing on the renewal of TCEQ Permit No.
50163.

I am a member of Citizens for Healthy Growth and an "affected person" living less than
one half mile from the Safety-Kleen facility. Our neighborhood was established in the
1960's before Safety-Kleen was even here. Our family all suffers from severe allergies
and respiratory problems. My daughter is incapacitated by a traumatic brain injury and is
wheelchair-bound. She, like me, also suffers from asthma.

Past spills and fires at this facility have endangered my family's health and well being,
and the additional storage and lack of appropriate protections allowed by this permit
renewal brings potentially greater danger to us and our neighbors.

Consequently, I seek a hearing to fully discuss the dangers to the community posed by
the increased volume of toxic chemical storage in the light of Safety-Kleen's past history
of numerous spills and fires.

Furthermore, in the interest of public health, I seek a hearing because this permit should
not be granted unless there are contingency plans, emergency response capabilities on
site, and plans for protecting me and my family within the 2.4 mile vulnerability zone
designated by Safety-Kleen Systems, Inc. own Risk Management Plan.

This hearing request also seeks a hearing on every issue raised in public comment, not
just those raised by me. This request includes every issue to which the Executive Director
responded.

Sincerely,



Dee Wooten
3103 Twilight
Denton, TX 76208
940-566-7973

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 OCT 23 PM 2:39
CHIEF CLERKS OFFICE

October 17, 2006

LaDonna Castanuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, TX 78711-3087

OPA ^H

OCT 24 2006

BY JB

*HW
4/30/15*

RE: Request for contested case hearing in the matter of the renewal of
TCEQ Permit No. 50163, Safety-Kleen Systems, Inc., Denton Recycle Center,
1702 Cooper Creek Road, Denton, TX 76208.

I am writing to request a contested case hearing on the renewal of TCEQ Permit No.
50163.

I am a member of Citizens for Healthy Growth and an "affected person" living less than
one quarter of a mile from the Safety-Kleen facility. I am also a cancer victim. My water
comes from a well close by the facility.

Past spills and fires at this facility have endangered my health and well being, and the
additional storage allowed by this permit renewal brings potentially greater danger to me
and my neighbors.

Consequently, I seek a hearing to fully discuss the dangers to the community posed by
the increased volume of toxic chemical storage in the light of Safety-Kleen's past history
of numerous spills and fires. For example, in September, 2001, a fire in a scrubber unit
required all of the City of Denton's personnel. There were only two employees on duty at
the facility at the time of the accident.

Furthermore, in the interest of public health, I seek a hearing because this permit should
not be granted unless there are contingency plans, emergency response capabilities on
site, and plans for protecting the community within the 2.4 mile vulnerability zone
designated by Safety-Kleen Systems, Inc. own Risk Management Plan for the worst case
scenario of an accidental release of hydrochloric acid vapor from a tank truck or toxic
releases from storage tank overflows.

This hearing request also seeks a hearing on every issue raised in public comment, not
just those raised by me. This request includes every issue to which the Executive Director
responded.

Sincerely,

Joy Powell

Joy Powell
3501 Mingo Road
Denton, TX 76208-3894
940-382-1163

CHIEF CLERKS OFFICE

2006 OCT 23 PM 2:41

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

October 24, 2006

H OPA
OCT 30 2006
BY RS

LaDonna Castanuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, TX 78711-3087

CHG
50163

CHIEF CLERKS OFFICE

OCT 27 PM 2:49

TEXAS
MISSION
ENVIRONMENTAL
QUALITY

RE: Request for contested case hearing in the matter of the renewal of
TCEQ Permit No. 50163, Safety-Kleen Systems, Inc., Denton Recycle Center,
1702 Cooper Creek Road, Denton, TX 76208.

I am the President of Citizens for Healthy Growth, 1620 Victoria Drive, Denton, TX 76209. I am writing on behalf of our organization to request a contested case hearing on the renewal of TCEQ Permit No. 50163.

Citizens for Healthy Growth (CHG) is an "affected person" because CHG seeks to protect the same environmental and public health interests presented by members of the community at the public meetings held on the renewal of this permit (December 13, 2004 and March 28, 2006). And, the organization seeks the same protections as does its members.

This hearing request seeks a hearing on every issue raised in public comment, not just those raised by CHG, and this request includes every issue to which the Executive Director responded.

Four members of CHG are petitioning the TCEQ as affected persons for a contested case hearing under their own names. They also serve as the representative members for CHG's hearing request. Those individuals are Joy Powell, Dee Wooten and her family, Delores Olmon, and E. Parks Olmon.

All of these individuals live within the 2.4 mile vulnerability zone as designated in Safety-Kleen's risk management plan. Joy Powell, a cancer victim, lives less than one-quarter mile from the facility and gets her water from a well. She resides at 3501 Mingo Road.

Dee Wooten lives less than one-half mile from Safety-Kleen. Her family suffers from allergies and asthma. Her daughter is incapacitated by a traumatic brain injury. She home schools her children. She resides at 3103 Twilight. Her neighborhood has only one street by which residents could flee in the event of a catastrophic accident at the facility.

E. Parks and Delores Olmon live less than a mile from the facility, near the discharge points for storm water runoff on the eastern boundary of Safety-Kleen's property, and fear the contamination of their well water, used both for drinking and for irrigating a

large vegetable garden in the event of a major accident at the facility. They reside at 4401 E. University Drive.

Hodge Elementary School and Ryan High School are within the 2.4 mile vulnerability zone and two churches are within one-quarter mile of Safety-Kleen. CHG also has concerns that recreational areas such as the Trinity River Green Belt, Clear Creek Nature Preserve and Center, and the watershed of the Upper Trinity/Little Elm that feeds into Lake Lewisville could be affected by an accident that involves Safety-Kleen's entire facility.

Furthermore, a new housing development, Lake View Estates, is located on Cooper Creek, which receives storm water run-off from Safety-Kleen's property. Permit 50163 does not take into account the topographical changes to the area through which any potentially toxic run-off would flow in the event of a major accident at Safety-Kleen. These changes include the aforementioned housing development and the widening of US 380 and the potential for flooding.

CHG contests this permit on the grounds that it does not protect the public and environmental health. Safety-Kleen's contingency plan contains no "plans specifically for responding to a catastrophe."

According to the Denton Fire Department, Safety-Kleen in Denton has had at least 19 fires between 1992-2004, and at least 22 incidents involving chemical spills between 1991-2003 (Emergency Response Notification System). On the federal level, Safety-Kleen in Denton has been cited three times for EPA violations related to the treatment and disposal of polychlorinated biphenyl (PCB), and has had 14 violations of the Clean Air Act.

All of the City of Denton's fire fighting equipment responded when a scrubber unit caught fire in September 2001. Neighboring fire departments were placed on call to respond to any other emergencies in Denton at the time. There were only two employees on duty at Safety-Kleen at the time of the accident.

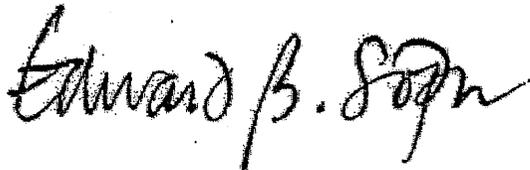
Given this record of accidents and spills it appears that Safety-Kleen has not taken the steps to identify and to prevent such problems—leaks, spills, and fires—before they occur. If this is true for small incidents it is also true for catastrophic situations.

The residential development in the area, hazards presented by the eventual full capacity, in 2011, of Safety-Kleen's storage capacity, indicate that the protection of the public health would best be served by extending the definition of "affected person" to those living within the 2.4 mile vulnerability zone designated by Safety-Kleen Systems, Inc. in their own Risk Management Plan. Without an adequate permit, and requirements for proper contingency plans that protect the community, this permit renewal should not be

granted. Safety-Kleen's activities involve serious risk of harm to the people, the land, and the water.

If the Executive Director, Office of Public Interest Counsel or the Applicant believes that this request does not comply with the requirements for a request for a hearing, or if additional information is required, please notify me of any such alleged discrepancies and I shall supply what information I am able to.

Sincerely,



Edward B. Soph
President, Citizens for Healthy Growth
1620 Victoria Drive
Denton, TX 76209
940.383.4693

**MORE THAN 3 MILLION GALLONS
OF TOXIC & HAZARDOUS WASTE
ARE HEADED TO DENTON - TO STAY**

And Only YOU Can Stop It!

PUBLIC MEETING

**Come & Ask
Questions!**

sponsored by

Texas Commission on Environmental Quality

**Voice Your
Opinion!**

7 P.M.

TUESDAY, MARCH 28, 2006

HODGE ELEMENTARY SCHOOL

3900 GRANT PARKWAY

Texas Commission on Environmental Quality (TCEQ) is requesting public comments on the renewal of Safety-Kleen Systems' Hazardous Waste Permit No. 50163.

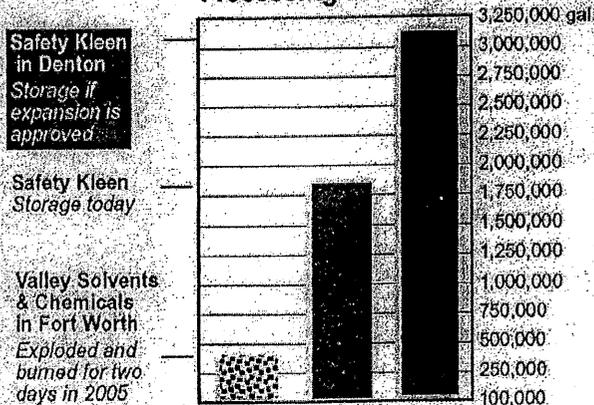
THE FACTS

- If this were a new permit application (not a renewal), **IT WOULD BE DENIED** by TCEQ because established residences, schools, churches and businesses are within 1/2 mile of Safety-Kleen storage tanks!

As of now, there exists:

- **No Impact Assessment** of dangers to Public Health & Safety, Air, or Water
- **No Protection for the 30,000+ Citizens** within the 2.4 mile "Vulnerability Zone"
- **No Evacuation Plan** in case of a Catastrophic Accident

**Comparison of DFW Metroplex
Toxic & Hazardous Waste
Processing Facilities**



For more information: Citizens for Healthy Growth 940.383.4693

Ms. Joy Powell
3501 Mingo Rd
Denton TX 76208

Ms. Powell:

Please let me introduce myself. I am Bob Sorensen, the Facility Manager of the Safety Kleen facility here in Denton. I understand that you have requested a formal hearing with regard to our permit renewal request and I was wondering if you might be willing to discuss your concerns about our facility with me.

Let me say right up front that I am not trying to talk you out of pursuing a hearing. I respect your right and the public's rights to participate in the permitting process and to know what is going on at our facility. I am simply contacting you to discuss your concerns as a neighbor of our facility.

I am contacting you so that I might have an opportunity to better understand your specific concerns as a neighbor of our facility, and to see if we might potentially find a way to address those concerns. We have always tried to be good neighbors and good corporate citizens in Denton and I view attempting to answer people's questions and addressing people's concerns as part of that responsibility.

If you would be willing to meet, I would be willing to do so at your home if that is convenient. I could also meet with you here at the facility where we could tour the facility as part of our meeting. Or we could meet at a neutral location if you prefer.

You can contact me at my direct line at 940-483-5227 or via my cell phone at 469-231-1987. I look forward to the opportunity to talk with you.

Sincerely,



Bob Sorensen
Facility Manager

January 18, 2007

Mr. Bob Sorenson
Safety-Kleen Systems, Inc.
1722 Cooper Creek Road
Denton, TX 76208

Dear Mr. Sorenson:

Thank you for your letter and invitation to speak with you. Our attorney has advised us that we first need to know when a hearing will be granted and who will be a party.

Sincerely,
E Parks Olmon
Delores Olmon

Parks and Delores Olmon
4401 E. University Drive
Denton, TX 76208

January 18, 2007

Mr. Bob Sorenson
Safety-Kleen Systems, Inc.
1722 Cooper Creek Road
Denton, TX 76208

Dear Mr. Sorenson:

Thank you for your letter and invitation to speak with you. I have been advised by legal counsel that I first need to know when a hearing will be granted and who will be a party.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dee Wooten", with a long horizontal flourish extending to the right.

Dee Wooten
3103 Twilight
Denton, TX 76208

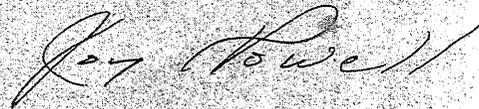
January 18, 2007

Mr. Bob Sorenson
Safety-Kleen Systems, Inc.
1722 Cooper Creek Road
Denton, TX 76208

Dear Mr. Sorenson:

Thank you for your letter and invitation to speak with you. I have been advised by legal counsel that I first need to know when a hearing will be granted and who will be a party.

Sincerely,

A handwritten signature in cursive script that reads "Joy Powell". The signature is written in dark ink and is positioned above the typed name and address.

Joy Powell
3501 Mingo Road
Denton, TX 76208

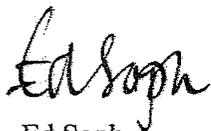
January 18, 2007

Mr. Bob Sorenson
Safety-Kleen Systems, Inc.
1722 Cooper Creek Road
Denton, TX 76208

Dear Mr. Sorenson:

Thank you for your letter and invitation to speak with you. I have been advised by legal counsel that I first need to know when a hearing will be granted and who will be a party.

Sincerely,

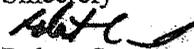
A handwritten signature in cursive script that reads "Ed Soph".

Ed Soph
1620 Victoria Drive
Denton, TX 76209

Mr. Ed Soph
1620 Victoria
Denton TX 76209

Dear Mr. Soph:

Thank you for your response to my recent request to meet personally with you. Although I am disappointed you did not accept my offer, I understand that you are represented by counsel. Because the state encourages parties to attempt to resolve their issues, please let me know who represents you so that my counsel can initiate contact with them. Obviously our invitation to meet with you and discuss your concerns still stands should you change your mind. I can be reached via mail at our facility, via phone at 940-483-5227 or via e-mail at Bob.Sorensen@safety-kleen.com

Sincerely

Robert Sorensen