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7

8 Attorneys for Plaintiff

9 **SUPERIOR COURT OF ARIZONA**  
**COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.*, STEPHEN A. )  
OWENS, Director, Arizona Department of )  
11 Environmental Quality, )

12 Plaintiff, )

13 vs. )

14 SAFETY-KLEEN SYSTEMS, INC., )  
15 a Wisconsin corporation, )

16 Defendant. )  
17

Case No.

**CONSENT JUDGMENT**  
(Non-Classified Civil)

18 **I. Recitals**

19 A. The Plaintiff, State of Arizona, *ex rel.*, Stephen A. Owens, Director, Arizona  
20 Department of Environmental Quality (the “State”), filed a Complaint alleging that the Defendant  
21 Safety-Kleen Systems, Inc., (“Safety-Kleen”) violated Arizona Revised Statutes (“A.R.S.”) Title  
22 49, Chapter 5 and rules promulgated thereunder and Safety-Kleen’s March 20, 2006  
23 transportation, storage and disposal permit (“the Permit”). The State brought its claims pursuant  
24 to A.R.S. §§ 49-924 and 49-926 and the Permit seeking civil penalties;

1           B.     Stephen A. Owens is the Director of the Arizona Department of Environmental  
2 Quality ("ADEQ"), and has been duly authorized by the State to enter into this Consent  
3 Judgment for and on behalf of the State;  
4

5           C.     At all times mentioned herein, Safety-Kleen operated a permitted treatment,  
6 storage, and disposal facility at 6625 West Frye Road, Chandler, Arizona (the "Facility");  
7

8           D.     On or about \_\_\_\_\_, 2007, ADEQ filed Civil Complaint Number \_\_\_\_ (CV  
9 \_\_\_\_\_) in the Superior Court of Arizona, County of Maricopa, against Safety-Kleen (the  
10 "Complaint");

11           E.     Safety-Kleen acknowledges that it has been provided with a copy of the Complaint  
12 in this action and waives service of process. Safety-Kleen further acknowledges that it has been  
13 fully advised of its right to a trial in this matter and has waived the same;  
14

15           F.     The parties hereto agree that settlement of the violations alleged in the Complaint  
16 is in the best interest of the parties and the public, and that entry of this Consent Judgment  
17 without further litigation is the most appropriate means of resolving the allegations in the  
18 Complaint;  
19

20           G.     Safety-Kleen admits to the jurisdiction of this Court and that venue is proper in  
21 Maricopa County; and,

22           H.     Safety-Kleen acknowledges that the State has made no promises of any kind or  
23 nature other than what is set forth in this Consent Judgment, and that Safety-Kleen has entered  
24 into this Consent Judgment voluntarily after due consideration.  
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1           **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED,**  
2 as follows:  
3

4                           **II. Jurisdiction and Venue**

5           A.     The Court has jurisdiction over the subject matter of this action and over the  
6 parties pursuant to the Arizona Constitution, Article 6, Section 14, as well as A.R.S. §§ 12-123,  
7 49-924(B), and 49-926. The Complaint states a claim upon which relief may be granted against  
8 Safety-Kleen pursuant to A.R.S. § 49-924(A).  
9

10          B.     Venue is proper in Maricopa County under A.R.S. §§ 49-924(B) and 12-401(17).  
11

12                           **III. Binding Effect**

13          A.     This Consent Judgment shall apply to, and be binding upon Safety-Kleen and its  
14 officers and directors, successors and assigns, and the State of Arizona.

15          B.     The parties hereby consent to the terms and entry of this Consent Judgment and  
16 agree not to contest its validity or terms in any subsequent proceeding.

17          C.     This Consent Judgment constitutes and embodies the full and complete  
18 understanding of the parties and supersedes all prior understandings or agreements, whether oral  
19 or in writing, that pertain to the subject matter herein.  
20

21          D.     Safety-Kleen shall condition the transfer of ownership or operation,  
22 or any other interest in the Facility, upon the successful execution of the terms and conditions of  
23 this Consent Judgment.  
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1 E. Safety-Kleen certifies that its undersigned representative is fully authorized to  
2 enter into the terms and conditions of this Consent Judgment, to execute it on behalf of Safety-  
3 Kleen and to legally bind Safety-Kleen to its terms.  
4

#### 5 IV. Definitions

6 The terms used in this Consent Judgment shall have the same meanings defined in A.R.S.  
7 Title 49 and all applicable regulations enacted thereunder.  
8

9 A. "Complaint" means the Civil Complaint No. \_\_\_\_\_ filed by the State in the  
10 Maricopa County Superior Court, against Safety-Kleen on or about \_\_\_\_\_, 2007.

11 B. "Day" shall mean a calendar day. In computing any period under this Consent  
12 Judgment, where the last day would fall on a Saturday, Sunday or a State or Federal holiday, the  
13 period shall run until the close of business of the next working day.  
14

15 C. "Defendant" shall mean Safety-Kleen Systems, Inc., a Wisconsin corporation.

16 D. "Effective Date" shall mean the day this Consent Judgment is entered by the  
17 Court.  
18

19 E. "Facility" as used in the term "the Facility" or in the terms "Safety-Kleen's  
20 Facility" shall mean the facility located at 6625 West Frye Road, Chandler, Arizona.

21 F. "Parties" means, Plaintiff, the State of Arizona, and Safety-Kleen.

22 G. "Permit" means the hazardous waste transportation, storage and disposal permit  
23 issued by ADEQ to Safety-Kleen on March 20, 2006.  
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1 H. "State" means the Plaintiff, State of Arizona, *ex rel.*, Stephen A. Owens, Director,  
2 ADEQ. For the purposes of this Consent Judgment, the State does not include any other agency,  
3 board, commission, department, officer or employee of the State of Arizona.  
4

## 5 **V. Civil Penalty**

6 A. Safety-Kleen shall pay a civil penalty to the State under A.R.S. § 49-924(A) in the  
7 amount of eighty thousand dollars (\$80,000.00 U.S.). Payment shall be made in a lump sum  
8 within thirty (30) days after the Effective Date of this Agreement.  
9

10 B. Safety-Kleen and the State agree that the civil penalty imposed by the State and  
11 agreed to by Safety-Kleen constitutes a debt for a fine, penalty or forfeiture payable to and for  
12 the benefit of a governmental unit, is not compensation for actual loss, and is specifically non-  
13 dischargeable under 11 U.S.C. § 523(a)(7). Upon entry of this Consent Judgment, the State  
14 shall be deemed a judgment creditor for purposes of collecting the civil penalty.  
15

16 C. The State shall have the right to record this Consent Judgment in every county in  
17 Arizona.  
18

## 19 **VI. Manner of Payment**

20 All payments made to the State under this Consent Judgment shall be by company check  
21 made payable to the "State of Arizona" and shall be delivered or mailed together with a letter  
22 tendering the check to:  
23

24 Michael D. Clark, Chief Financial Officer  
25 Attention: Accounts Receivable  
26 Arizona Department of Environmental Quality  
1110 West Washington Street  
Phoenix AZ 85007

1 The letter shall identify this case by the parties and the Court docket number. A copy of the  
2 letter and the check shall be sent to the Office of the Attorney General and to ADEQ at the  
3 following addresses:  
4

5 Mark Horlings  
6 Assistant Attorney General  
7 Environmental Enforcement Section  
8 1275 West Washington Street  
9 Phoenix, AZ 85007

10 G. Randall Matas, Manager  
11 Hazardous Waste Inspection and Compliance Unit  
12 Waste Programs Division  
13 Arizona Department of Environmental Quality  
14 1110 West Washington Street  
15 Phoenix, AZ 85007

16 Safety-Kleen shall pay interest on any amount not paid by the due date at the rate  
17 established pursuant to A.R.S. § 44-1201. If Safety-Kleen fails to pay the full amount of the  
18 Judgment as required by Sections V. and VI., at the election of the State this Consent Judgment  
19 shall become null and void, and the State may take action to seek penalties for any and all  
20 violations in the Complaint and May 11, 2006 Notice of Violation ("2006 NOV").

## 21 **VII. Supplemental Environmental Project**

22 A. Safety-Kleen shall conduct a Supplemental Environmental Project ("SEP") within  
23 one-hundred eighty days (180) of the Effective Date by implementing a half-day hazardous  
24 waste training seminar for conditionally exempt small quantity hazardous waste generators and  
25 small quantity hazardous waste generators in the Arizona automotive market, including auto  
26 repair shops, paint and body shops and dealerships.

1           B.     Within thirty (30) days of the execution of this Consent Judgment, Safety-Kleen  
2 shall provide to ADEQ an agenda of the seminar, as well as the topics, potential attendees and  
3 speakers. At that time, Safety-Kleen shall also provide a detailed budget. ADEQ must provide  
4 comment and approval to Safety-Kleen within thirty (30) days before Safety-Kleen may  
5 proceed. If ADEQ requires further information regarding the seminar or amendments to the  
6 seminar, Safety-Kleen shall provide such information within thirty (30) business days from the  
7 date of ADEQ's comments.  
8  
9

10           C.     Safety-Kleen shall provide ADEQ proof that it performed the SEP within sixty  
11 (60) days of the seminar date. Documentation shall be in the form of receipts, time sheets,  
12 copies of checks issued to contractors, or other entities for services rendered, and any other  
13 applicable forms of documentation. If Safety-Kleen has expended less than fifteen thousand  
14 dollars (\$15,000.00 U.S.) on the training seminar, the difference between money expended on  
15 the SEP as of that date and fifteen thousand dollars (\$15,000.00 U.S.) shall be paid to the State  
16 within thirty (30) calendar days of production of its documentation.  
17  
18

19           D.     All submissions shall be made in the same manner as provided under Section VIII.

20           E.     Any written or oral public statements made by Safety-Kleen in connection with  
21 the SEP must state that the hazardous waste training seminar was produced in connection with  
22 this Consent Judgment.  
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1 **VIII. Submissions**

2 A. Documents, materials or notices submitted in accordance with this Consent  
3  
4 Judgment shall be deemed submitted when postmarked, return receipt requested, accepted for  
5 delivery by a commercial delivery service, sent by facsimile or hand-delivered.

6 B. All reports submitted to the State pursuant to this Consent Judgment shall certify  
7  
8 under penalty of law that the information contained in the report is true, accurate and complete  
9 by having an authorized representative of Safety-Kleen sign the following statement:

10 I certify under penalty of law that this document and all attachments, if any, were  
11 prepared under my direction or supervision by qualified personnel responsible for  
12 properly gathering and evaluating the information submitted. Based on my inquiry of the  
13 person or people who are responsible for gathering and evaluating the information, to the  
14 best of my knowledge and belief, the information submitted is true, accurate and  
complete. I am aware that there are significant penalties for knowingly submitting false  
information, including the possibility of fines and imprisonment for knowing violations.

15 **IX. Liquidated Damages**

16 The parties agree that calculating the harm to the State for violation of the provisions of  
17 this Consent Judgment would be very difficult. The Parties therefore agree that a violation of  
18 the following provisions renders Safety-Kleen liable for liquidated damages. The liquidated  
19 damages shall begin to accrue on the day that performance is due, and shall continue to accrue  
20 through the day before performance is completed.

21 A. If Safety-Kleen fails to comply with any of the requirements of Section VII. of this  
22  
23 Consent Judgment, Safety-Kleen shall pay the following liquidated damages pursuant to the  
24 schedule below:  
25  
26



<u>Period of Failure to Comply</u>	<u>Damages Per Day of Violation</u>
1 <sup>st</sup> through 31 <sup>st</sup> day	\$1,000-2,000 per day per violation
32 <sup>nd</sup> through 60 <sup>th</sup> day	\$2,000-4,000 per day per violation
After 60 days	\$3,000-5,000 per day per violation

B. Unless Safety-Kleen invokes, in writing, the dispute resolution procedure specification in Section X. of this Consent Judgment, Safety-Kleen shall pay the liquidated damages set forth in this Section within ten (10) days following written demand by the State. Payment shall be made in the manner set forth in Section VI. Liquidated damages shall begin to accrue on the day after performance is due and shall continue through the final day of completion, even if no notice is sent to Safety-Kleen. Nothing herein shall prevent the simultaneous accrual of separate liquidated damages for separate violations of the Consent Judgment. Liquidated damages shall accrue as provided in this Section during the dispute resolution process required by Section X. of this Consent Judgment, but the due date for payment of liquidated damages shall be extended until the dispute resolution process is concluded.

## **X. Dispute Resolution**

A. All decisions of the State rendered pursuant to Sections VII. and XI. of this Consent Judgment including, but not limited to, the meaning or the application of this Consent Judgment and its provisions, or whether Safety-Kleen is in compliance with its terms, shall be delivered in writing to Safety-Kleen in the manner described in Section VIII. with an explanation for the decision. Such decisions shall be final unless Safety-Kleen invokes the dispute resolution provisions provided for in this Section.

B. After notice is received by Safety-Kleen as provided in Paragraph A, above, the Parties shall engage in informal negotiations regarding the disputes for a period of seven (7) business days, or for a longer period mutually agreed upon by the Parties.

C. If the dispute is not resolved pursuant to the informal process described in Paragraph B above, the State shall issue a written decision regarding the matter in dispute. The decision by the State shall be considered final and binding unless Safety-Kleen requests, in writing and within five (5) days of receipt of the State's decision, that the ADEQ Director of the Waste Programs Division ("Division Director") reconsiders the initial decision. The Division Director shall issue a final written decision after receipt of the request. The written decision of the Division Director is final and binding.

D. Any disputes not covered by this Section shall be within the exclusive jurisdiction of this Court for resolution.

E. Safety-Kleen's invocation of this Section shall not itself toll or extend any time periods for performance by Safety-Kleen under the provisions of this Consent Judgment.

## XI. Force Majeure

A. Safety-Kleen shall perform all the requirements of this Consent Judgment according to the time limits set forth herein, unless its performance is prevented or delayed by events that constitute a *Force Majeure*. Safety-Kleen shall take all reasonable measures to prevent or minimize any delay in performing the requirements of this Consent Judgment.

B. If any *Force Majeure* event occurs that may delay the performance of any work under this Consent Judgment, Safety-Kleen shall notify G. Randall Matas, Manager, Hazardous

1 Waste Inspections and Compliance Unit at ADEQ within 24 hours. Within ten (10) business  
2 days of the *Force Majeure* event Safety-Kleen shall provide G. Randall Matas, Manager,  
3 Hazardous Waste Inspections and Compliance Unit, in the manner provided under Section VIII.,  
4 a written explanation and description of the reasons for the delay in performance; the anticipated  
5 duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a  
6 schedule for implementation of any measures to be taken to prevent or mitigate the delay or the  
7 effect of the delay; and the rationale for attributing such delay to a *Force Majeure* event. Failure  
8 to comply with the above requirements shall preclude Safety-Kleen from asserting any claim of  
9 *Force Majeure*. Safety-Kleen shall be deemed to have knowledge of any *Force Majeure*  
10 circumstance of which its contractors, or any party acting on its behalf had or should have had  
11 knowledge.  
12  
13  
14

15 C. If the State agrees that the delay in performance is attributable to a *Force Majeure*  
16 event or is reasonable under the circumstances, the time for performance of the obligations  
17 under this Consent Judgment that are affected by the *Force Majeure* event and the time for  
18 performance of any activity dependent on the delayed activity shall be extended for such time as  
19 is necessary to complete those obligations. An extension of time for performance of the  
20 obligations affected by the *Force Majeure* event or non-*Force Majeure* event shall not, of itself,  
21 extend the time for performance of any other obligation. If the State does not approve the delay  
22 or agree that the delay or anticipated delay has been or will be caused by a *Force Majeure* event,  
23 or is not otherwise reasonable, the State shall notify Safety-Kleen in writing of its decision. If  
24 the State agrees that the delay is attributable to a *Force Majeure* event or is reasonable under the  
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1 circumstances, the State shall notify Safety-Kleen in writing of the length of the extension that  
2 will be equivalent in time to the reasonable delay, if any, for performance of the obligations  
3 affected by the *Force Majeure* event, or as otherwise approved by the State. The decision of the  
4 State pursuant to this Paragraph is subject to the dispute resolution procedure in Section X. of  
5 this Consent Judgment.  
6

## 7 **XII. Material Breach**

8  
9 Any failure by Safety-Kleen to pay (a) the monetary judgment within the time specified  
10 by Section V.; (b) the liquidated damages within the times specified by Section IX.; or, (c) to  
11 perform the SEP within the times specified by Section VII. shall constitute a material breach and  
12 violation of this Consent Judgment. The State in its sole discretion, shall have the option of  
13 either:  
14

15 A. Enforcing this Consent Judgment through the Court, in which case Safety-Kleen  
16 shall be liable for interest and additional penalties pursuant to the provisions of A.R.S. § 49-  
17 113(B) and the State's reasonable costs and attorneys' fees incurred in enforcing this Consent  
18 Judgment; or  
19

20 B. Declaring the Consent Judgment null and void, and the State may pursue the  
21 Complaint or refile this action against Safety-Kleen. In this event, Safety-Kleen shall be barred  
22 from alleging the affirmative defenses of estoppel, laches, or the expiration of any statute of  
23 limitations. In any future actions for the violations contained in the Complaint, Safety-Kleen  
24 shall receive credit for any civil penalties paid to the State pursuant to this Consent Judgment.  
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1 **XIII. Release**

2 A. Upon fulfillment of its obligations under Sections V. and VII., Safety-Kleen, its  
3 successors and assigns, and all its past, present, and future directors, officers and shareholders  
4 are released from any and all civil liability to the State for the violations alleged in the  
5 Complaint and for any violations arising out of any facts or circumstances stated in the  
6 Complaint.  
7

8 B. This release does not cover criminal liability under any local, state or federal  
9 statute or regulation.  
10

11 C. Safety-Kleen and all present or former parent, sister, or affiliate entities, and each  
12 of their directors, officers, employees, agents, servants, attorneys, successors and assigns,  
13 release the State, its agencies, departments, officials, employees or agents from any and all  
14 claims, known or unknown, which it may have in relation to the allegations contained in the  
15 Complaint.  
16

17 **XIV. Severability**

18 This Consent Judgment is not severable. If any Section of this Consent Judgment is  
19 declared invalid or unenforceable by this Court, the entire Consent Judgment is rendered invalid  
20 and the Parties shall return to the positions they occupied before the execution of this Consent  
21 Judgment.  
22

23 **XV. Applicable Law**

24 The validity, meaning, interpretation, enforcement and effect of this Consent Judgment  
25 shall be governed by the law of the State of Arizona.  
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Each party shall bear its own costs and attorneys' fees in this action, except that as permitted by law, Safety-Kleen shall be liable to the State for any costs and/or attorneys' fees incurred by the State to enforce this Consent Judgment.

## XVII. Reservation of Rights

A. Entry of this Consent Judgment is solely for the purpose of settling the Complaint, and except as expressly set forth herein, does not preclude the State or any other agency or officer or subdivision of the State of Arizona, from instituting other administrative, civil or criminal proceedings as may be appropriate now or in the future, initiating a civil or criminal action against Safety-Kleen for violations of Title 49, Article 5, or the rules promulgated thereunder, or any other violation of Arizona state law, occurring after the Effective Date and not set forth in the Complaint or 2006 NOV.

B. This Consent Judgment does not encompass issues regarding violations, sources, operations, facilities or processes of Safety-Kleen not expressly covered by the terms of this Consent Judgment and is without prejudice to the rights of the State of Arizona arising under any of the environmental statutes and rules of the State of Arizona with regard to such matters. The State reserves the right to take any and all appropriate legal action against Safety-Kleen for violations that are not alleged in the Complaint or the 2006 NOV. The State reserves the right to take any and all appropriate action necessary to protect the public health, welfare, or the environment.

1           C.     Nothing in this Consent Judgment shall constitute a permit of any kind, or a  
2 modification of any permit of any kind, under federal, state or local law. Nothing in this  
3 Consent Judgment shall in any way alter, modify or revoke federal, state or local statutes,  
4 regulations, rules or requirements. Nor shall this Consent Judgment affect or relieve Safety-  
5 Kleen in any manner of its obligation to apply for, obtain and comply with applicable federal,  
6 state and local permits. Compliance with the terms of this Consent Judgment shall be no  
7 defense to any action to enforce any such permits or requirements. The State does not by its  
8 consent to the entry of this Consent Judgment, warrant or aver that compliance with this  
9 Consent Judgment will constitute or result in compliance with Arizona law. Notwithstanding  
10 the State's review and approval of any materials submitted pursuant to this Consent Judgment,  
11 Safety-Kleen shall remain solely responsible for compliance with any other applicable federal,  
12 state or local law or regulation. Any submissions made to the State pursuant to this Consent  
13 Judgment shall not be interpreted as a waiver or limitation of the State's authority to enforce any  
14 federal, state or local statute or regulation including permit conditions.

15  
16           D.     The State shall have the right to take enforcement action for any and all violations  
17 of this Consent Judgment and reserve the right to pursue all legal and equitable remedies for  
18 such violations.

19  
20           E.     This Consent Judgment does not affect any Consent Orders in effect between the  
21 State and Safety-Kleen.

22  
23           F.     The entry of this Consent Judgment shall not serve as a basis for any defense of  
24 claim splitting, estoppel, laches, *res judicata*, or waiver challenging the State's legal right to  
25  
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bring an action regarding matters not arising from the facts alleged in the Complaint and the 2006 NOV.

### **XVIII. Modifications**

Any modification of this Consent Judgment must be in writing and approved by the parties and the Court, except that any extension for the performance of any requirement of this Consent Judgment may be requested in writing by Safety-Kleen and consented to in writing by the State.

### **XIX. Retention of Jurisdiction**

The Court shall retain jurisdiction for the purposes of interpreting, implementing, modifying and enforcing the terms and conditions of this Consent Judgment, to resolve disputes arising hereunder, and to take any action necessary or appropriate for its construction or execution.

### **XX. Proof of Violations in Future Proceedings**

The alleged violations that are the subject of this Consent Judgment may be used by the State in any future enforcement proceedings brought against Safety-Kleen for the sole purpose of determining appropriate penalties in any future proceeding. For this purpose only, Safety-Kleen agrees to admit the violations alleged in the Complaint.

### **XXI. Termination**

The provisions of this Consent Judgment, other than the releases contained in Section XIV., shall be satisfied and shall terminate after all of the following have occurred:



A. The Defendant has paid the civil penalties under Section V., and any liquidated damages due under Sections IX. of this Consent Judgment; and,

B. The Defendant has completed all of the actions required by Section VII. of this Consent Judgment.

After satisfaction of this Consent Judgment, upon request by Safety-Kleen or after due course, the State shall execute and file a satisfaction of judgment with this Court and in every County that this judgment was recorded.

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Judge of the Superior Court

1 **CONSENT TO JUDGMENT**

2 \_\_\_\_\_, on behalf of Safety-Kleen, hereby acknowledges that (s)he is  
3  
4 authorized by Safety-Kleen to sign this Consent Judgment, has read the foregoing Consent  
5 Judgment in its entirety, agrees with the statements made therein, consents to its entry by the  
6 Court and agrees that Safety-Kleen will abide by the same.

7 DATED, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
8  
9

10 \_\_\_\_\_  
11 Safety-Kleen Systems, Inc.

12 By its \_\_\_\_\_ (title)  
13

14 Amanda E. Stone, on behalf of Plaintiff, State of Arizona, hereby acknowledges that she  
15 is authorized by the Director of ADEQ to sign this Consent Judgment, has read the foregoing in  
16 its entirety, agrees with the statements made therein, consents to its entry by the Court and  
17 agrees that the State and ADEQ will abide by the same.  
18

19 DATED, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
20  
21

22 \_\_\_\_\_  
23 Amanda E. Stone, Director  
24 Waste Programs Division  
25 Arizona Department of Environmental Quality  
26

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