

Case Name: *Safety-Kleen UK Ltd v The Environment Agency* [2020] EWHC 3147 (Admin) (20 November 2020)

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Commentary: The Claimant provides specialist mechanical parts washers, containing kerosene, to its customers. It then collects the “dirty” kerosene from its clients, uses some of this kerosene to wash out the used drums and then pumps it into tanks where it is transferred to another company for cleaning and re-use by the Claimant. By a written decision of August 2018, the Environment Agency, decided that the used kerosene become waste when it was collected from the customer’s premises and remained waste until it was cleaned. The Claimant challenged this decision.

The Court placed significant weight on the judgment of the Environment Agency, as the expert regulator familiar with the impact of the language of the Waste Framework Directive (Directive 2008/98) which sets out the framework for determining whether or not a substance is “waste”, and upheld the decision letter the subject of the challenge. Mr Justice Ouseley held that the fundamental issue in the case is the status of the dirty kerosene in the hands of the customer when it is collected by the Claimant i.e. is it being “discarded” by the customer. The answer to this the Court found was definitely that the customers intend to discard of the kerosene as they no longer want or need it. The fact that the Claimant is able to make use of this kerosene to clean drums is irrelevant to the customer and is a subordinate and incidental to the primary use of the kerosene made by the customer. The dirty kerosene is therefore “waste” once it is collected by the Claimant from its customers.

Case summary prepared by Juliet Munn