

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-1638-MSW-E **TCEQ ID:** RN102831674 **CASE NO.:** 36665

**RESPONDENT NAME:** RJR BioEnergy, Inc.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> USED OIL
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> RJR Bio Energy, 903 East San Patricio Avenue, Mathis, San Patricio County</p> <p><b>TYPE OF OPERATION:</b> Used oil transporter and transfer facility</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on June 18, 2008, alleging the Respondent was storing used oil with no secondary containment. A complaint was also received on June 19, 2008, alleging that tanks were leaking. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> Complaints were received, but the complainants have not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 27, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Ross Fife, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2541; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Ronald K. Rice, President, RJR BioEnergy, Inc., 503 Rio Street, Mathis, Texas 78368  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> June 18 and 19, 2008</p> <p><b>Date of Investigation Relating to this Case:</b> June 19, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> September 9, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to provide secondary containment for the aboveground storage tanks ("ASTs") used to store used oil and for the area utilized to store drums and totes containing used oil [30 TEX. ADMIN. CODE § 324.11 and 40 CODE OF FEDERAL REGULATIONS § 279.45(d) and (e)].</p> <p>2) Failure to clean up and manage properly the release of used oil. Specifically, visible hydrocarbon contamination of soil was observed at the loading dock and container storage area [30 TEX. ADMIN. CODE § 324.11 and 40 CODE OF FEDERAL REGULATIONS § 279.45(h)(3)].</p> <p>3) Failure to provide proof of financial assurance as a used oil handler facility [30 TEX. ADMIN. Code § 324.22(b)].</p>	<p><b>Total Assessed:</b> \$7,761</p> <p><b>Total Deferred:</b> \$1,552  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$189 (remaining \$6,020 due in 35 monthly payments of \$172 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order, submit documentation that demonstrates acceptable financial assurance for the closure of the Facility;</p> <p>b. Within 30 days after the effective date of this Agreed Order, take necessary response actions to remove oil-contaminated soil from the Facility and dispose of the contaminated soil at an authorized facility;</p> <p>c. Within 60 days after the effective date of this Agreed Order:</p> <p>i. Provide secondary containment for all ASTs, drums and storage totes at the Facility; or</p> <p>ii. Cease accepting additional used oil at the Facility and remove all previous stored used oil and dispose of it at an authorized facility.</p> <p>d. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a through c.</p>

Additional ID No(s): 41125



## Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

<b>DATES</b>	<b>Assigned</b>	15-Sep-2008			
	<b>PCW</b>	14-Oct-2008	<b>Screening</b>	14-Oct-2008	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	RJR BioEnergy, Inc.
<b>Reg. Ent. Ref. No.</b>	RN102831674
<b>Facility/Site Region</b>	14-Corpus Christi
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	36665	<b>No. of Violations</b>	3
<b>Docket No.</b>	2008-1638-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Used Oil	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Ross Fife
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500

### Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

#### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **Subtotals 2, 3, & 7**

5.0% Enhancement

**Notes**

**Culpability** **Subtotal 4**

0.0% Enhancement

**Notes**

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit** **Subtotal 6**

0.0% Enhancement\*

Total EB Amounts	\$4,643
Approx. Cost of Compliance	\$10,142

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

127.5%

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL** **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

20.0%

Reduction

**Notes**

**PAYABLE PENALTY**

<b>Screening Date</b>	14-Oct-2008	<b>Docket No.</b>	2008-1638-MSW-E	<b>PCW</b>
<b>Respondent</b>	RJR BioEnergy, Inc.	Policy Revision 2 (September 2002)		
<b>Case ID No.</b>	36665	PCW Revision June 12, 2008		
<b>Reg. Ent. Reference No.</b>	RN102831674			
<b>Media [Statute]</b>	Used Oil			
<b>Enf. Coordinator</b>	Ross Fife			

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

>> **Repeat Violator (Subtotal 3)**

No **Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer **Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes** Enhancement due to one NOV issued for same or similar violation.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 5%

**Screening Date** 14-Oct-2008 **Docket No.** 2008-1638-MSW-E **PCW**  
**Respondent** RJR BioEnergy, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 36665 *PCW Revision June 12, 2008*  
**Reg. Ent. Reference No.** RN102831674  
**Media [Statute]** Used Oil  
**Enf. Coordinator** Ross Fife

**Violation Number**   
**Rule Cite(s)** 30 Tex. Admin. Code § 324.11 and 40 Code of Federal Regulations § 279.45(d) and (e)  
**Violation Description** Failed to provide secondary containment for the aboveground storage tanks ("ASTs") used to store used oil and for the area utilized to store drums and totes containing used oil. Specifically, secondary containment was not provided for two 8,800 gallon ASTs and numerous 55 gallon drums and storage totes containing used oil at the Facility.  
**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes** Human health or the environment will or could be exposed to significant amounts of pollutants which would exceed protective levels as a result of the violation.  
**Adjustment**

**Violation Events**

Number of Violation Events  Number of violation days   
*mark only one with an x*  

daily	<input type="text"/>
monthly	<input checked="" type="checkbox"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

Four monthly events are recommended from the June 19, 2008 investigation date to the October 14, 2008 screening date.

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

**Notes** The Respondent does not meet the good faith criteria for this violation.  
**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**   
**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** RJR BioEnergy, Inc.  
**Case ID No.** 36665  
**Reg. Ent. Reference No.** RN102831674  
**Media** Used Oil  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	19-Jun-2008	12-Jun-2009	0.98	\$245	n/a	\$245

Notes for DELAYED costs

Estimated cost to equip site with secondary containment on ASTs and other oil storage areas. The Date Required is the date of the investigation. The Final Date is the estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$5,000	<b>TOTAL</b>	\$245
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Screening Date 14-Oct-2008

Docket No. 2008-1638-MSW-E

PCW

Respondent RJR BioEnergy, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36665

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102831674

Media [Statute] Used Oil

Enf. Coordinator Ross Fife

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 324.11 and 40 Code of Federal Regulations § 279.45(h)(3)

Violation Description Failed to clean up and manage properly the release of used oil. Specifically, visible hydrocarbon contamination of soil was observed at the loading dock and container storage area.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes Human health or the environment has been exposed to insignificant pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events   Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="checkbox"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Two quarterly events are recommended from the June 19, 2008 investigation date to the October 14, 2008 screening date.

Good Faith Efforts to Comply

0.0% Reduction

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

## Economic Benefit Worksheet

**Respondent** RJR BioEnergy, Inc.  
**Case ID No.** 36665  
**Reg. Ent. Reference No.** RN102831674  
**Media** Used Oil  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$1,000	19-Jun-2008	12-Jun-2009	0.98	\$49	n/a	\$49
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to complete the remediation of the area and to dispose of contaminated soil at an authorized facility. Date Required is the investigation date and Final Date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$49

<b>Screening Date</b> 14-Oct-2008 <b>Respondent</b> RJR BioEnergy, Inc. <b>Case ID No.</b> 36665 <b>Reg. Ent. Reference No.</b> RN102831674 <b>Media [Statute]</b> Used Oil <b>Enf. Coordinator</b> Ross Fife <b>Violation Number</b> <input type="text" value="3"/> <b>Rule Cite(s)</b> <input type="text" value="30 Tex. Admin. Code § 324.22(b)"/> <b>Violation Description</b> <input type="text" value="Failed to provide proof of financial assurance as a used oil handler facility. Specifically, at the time of the investigation, the Facility was being operated without proper financial assurance."/>	<b>Docket No.</b> 2008-1638-MSW-E <b>PCW</b> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 12, 2008</i>																			
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OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td>Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"><b>Percent</b> <input type="text" value="0%"/></td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Harm				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Falsification	X	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>																
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>																			
<b>Adjustment</b> <input type="text" value="\$2,250"/>																				
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<b>Violation Events</b>																				
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<b>Violation Base Penalty</b> <input type="text" value="\$250"/>																				
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	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">0.0% Reduction</td> <td><input type="text" value="\$0"/></td> </tr> <tr> <td></td> <td style="text-align: center;">Before NOV    NOV to EDRP/Settlement Offer</td> </tr> <tr> <td>Extraordinary</td> <td><input type="text"/></td> </tr> <tr> <td>Ordinary</td> <td><input type="text"/></td> </tr> <tr> <td>N/A</td> <td style="text-align: center;">X (mark with x)</td> </tr> <tr> <td>Notes</td> <td><input type="text" value="The Respondent does not meet the good faith criteria for this violation."/></td> </tr> </table>	0.0% Reduction	<input type="text" value="\$0"/>		Before NOV    NOV to EDRP/Settlement Offer	Extraordinary	<input type="text"/>	Ordinary	<input type="text"/>	N/A	X (mark with x)	Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>							
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Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>																			
<b>Violation Subtotal</b> <input type="text" value="\$250"/>																				
<b>Economic Benefit (EB) for this violation</b>																				
<b>Estimated EB Amount</b>	<input type="text" value="\$4,349"/>																			
<b>Statutory Limit Test</b>																				
<b>Violation Final Penalty Total</b>	<input type="text" value="\$597"/>																			
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$597"/>																				

## Economic Benefit Worksheet

**Respondent:** RJR BioEnergy, Inc.  
**Case ID No.:** 36665  
**Reg. Ent. Reference No.:** RN102831674  
**Media:** Used Oil  
**Violation No.:** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$4,142	19-Jun-2007	19-Jun-2008	1.00	\$207	\$4,142	\$4,349
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual cost to obtain proper financial assurance for the Facility. The Date Required is one year prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance

\$4,142

**TOTAL**

\$4,349

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602567901 RJR BioEnergy, Inc.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102831674 RJR BIO ENERGY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	41125
	USED OIL	REGISTRATION	A85913
Location:	903 E SAN PATRICIO AVE, MATHIS, TX, 78368	Rating Date: 9/1/2008	Repeat Violator: NO
TCEQ Region:	REGION 14 - CORPUS CHRISTI		
Date Compliance History Prepared:	November 21, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 21, 2003 to November 21, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Ross Fife</u>	Phone:	<u>512-239-2541</u>

### Site Compliance History Components

- |  |            |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes        |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No         |
| 3. If Yes, who is the current owner?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | N/A        |
| 5. When did the change(s) in ownership occur?  | N/A        |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 01/10/2007 (535909)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/20/2006 (512518)

Self NO  
Report?

Classification: Moderate

Citation: 30 TAC Chapter 324, SubChapter A 324.11(2)  
30 TAC Chapter 324, SubChapter A 324.4(2)(C)(i)  
40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.42(b)  
Description: Failure to register as a used oil transporter.

Self NO  
Report?

Classification: Moderate

Citation: 30 TAC Chapter 324, SubChapter A 324.11  
40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.45(e)  
Description: Failure to provide secondary containment for the above ground tanks used to store used oil and for the area utilized to store totes containing used oil.

Self NO  
Report?

Classification: Moderate

Citation: 30 TAC Chapter 324, SubChapter A 324.11

Description: Failure to properly respond to the releases of used oil on the facility property.  
Specifically, the facility owner/operator failed to clean up and manage properly the released used oil and other materials.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
RJR BIOENERGY, INC.  
RN102831674

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-1638-MSW-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding RJR BioEnergy, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 371 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a used oil transporter and transfer facility at 903 East San Patricio Avenue in Mathis, San Patricio County, Texas (the "Facility").
2. The Facility involves or involved the management of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 14, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Seven Hundred Sixty-One Dollars (\$7,761) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Eighty-Nine Dollars (\$189) of the administrative penalty and One Thousand Five Hundred Fifty-Two Dollars (\$1,552) is deferred

contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Twenty Dollars (\$6,020) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Seventy-Two Dollars (\$172) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide secondary containment for the aboveground storage tanks ("ASTs") used to store used oil and for the area utilized to store drums and totes containing used oil, in violation of 30 TEX. ADMIN. CODE § 324.11 and 40 CODE OF FEDERAL REGULATIONS § 279.45(d) and (e), as documented during an investigation conducted on June 19, 2008.
2. Failed to clean up and manage properly the release of used oil, in violation of 30 TEX. ADMIN. CODE § 324.11 and 40 CODE OF FEDERAL REGULATIONS § 279.45(h)(3), as documented during

an investigation conducted on June 19, 2008. Specifically, visible hydrocarbon contamination of soil was observed at the loading dock and container storage area.

3. Failed to provide proof of financial assurance as a used oil handler facility, in violation of 30 TEX. ADMIN. Code § 324.22(b), as documented during an investigation conducted on June 19, 2008.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: RJR BioEnergy, Inc., Docket No. 2008-1638-MSW-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Agreed Order, submit documentation that demonstrates acceptable financial assurance for the closure of the Facility, in accordance with 30 TEX. ADMIN. CODE § 324.22(b) to:

Financial Assurance Team, MC 184  
Texas Commission on Environmental Quality  
P.O. Box 13807  
Austin, Texas 78711-3087
  - b. Within 30 days after the effective date of this Agreed Order, take necessary response actions to remove oil-contaminated soil from the Facility and dispose of the contaminated soil at an authorized facility, in accordance with 40 CODE OF FEDERAL REGULATIONS § 279.45(h);
  - c. Within 60 days after the effective date of this Agreed Order:

- i. Provide secondary containment for all ASTs, drums and storage totes at the Facility, in accordance with 40 CODE OF FEDERAL REGULATIONS § 279.45(d) and (e); or
  - ii. Cease accepting additional used oil at the Facility and remove all previous stored used oil and dispose of it at an authorized facility.
- d. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a through 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section, Manager  
Corpus Christi Regional Office  
Texas Commission on Environmental Quality  
6300 Ocean Drive, Suite 1200  
Corpus Christi, Texas 78412-5503

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Srdelin  
\_\_\_\_\_  
For the Executive Director

4/2/2009  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Ronald K. Rice  
\_\_\_\_\_  
Signature

2/20/2009  
\_\_\_\_\_  
Date

Ronald K. Rice  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
RJR BioEnergy, Inc.

President  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.