

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0782-MSW-E TCEQ ID RN105644421 CASE NO. 37688
RESPONDENT NAME: RAPID ENVIRONMENTAL SERVICES, LLC

ORDER TYPE:		
<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	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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 checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 3505 Lee Boulevard, El Paso, El Paso County

TYPE OF OPERATION: used oil and oil filter handling facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The Texas Register comment period expired February 15, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492

TCEQ Regional Contact: Mr. Kent Waggoner, El Paso Regional Office, MC R-6, (915) 834-4957

Respondent: Mr. Ted Booher, President, Rapid Environmental Services, LLC, 7815 Highway 225, LaPorte, Texas 77571

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 20, 2009</p> <p>Date of NOE Relating to this Case: May 1, 2009</p> <p>Background Facts: The EDPRP was filed on September 28, 2009 and re-filed for service on October 2, 2009. The agreed order was signed on December 15, 2009.</p> <p>Current Compliance Status: No outstanding Technical Requirements.</p> <p>MSW: Failed to have a valid registration with the TCEQ prior to storing, processing, recycling or disposing of used oil and used oil filters [30 TEX. ADMIN. CODE §§ 324.4(2)(C)(i) and 328.24(a)].</p>	<p>Total Assessed: \$475</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$475</p> <p>The Respondent paid the administrative penalty in full</p> <p>Site Compliance History Classification: <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent obtained Used Oil Registration #A85991 on September 15, 2009.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	18-May-2009			
	PCW	17-Dec-2009	Screening	22-May-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	RAPID ENVIRONMENTAL SERVICES, LLC				
Reg. Ent. Ref. No.	RN105644421				
Facility/Site Region	6-EI Paso	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37688	No. of Violations	1		
Docket No.	2009-0782-MSW-E	Order Type	1660		
Media Program(s)	Used Oil Filter	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Michael Meyer		
		EC's Team	Enforcement Team 7		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	-5.0% Reduction	Subtotals 2, 3, & 7	-\$25
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Notes: Enhancement of 5% for an NOV for same or similar violations and 10% reduction for the Respondent's classification as a high performer.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1
 Approx. Cost of Compliance: \$25
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$475
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$475

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$475
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$475
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Screening Date 22-May-2009 **Docket No.** 2009-0782-MSW-E
Respondent RAPID ENVIRONMENTAL SERVICES, LLC
Case ID No. 37688
Reg. Ent. Reference No. RN105644421
Media [Statute] Used Oil Filter
Enf. Coordinator Michael Meyer

PCW

Policy Revision 2 (September 2002)
 PCW Revision October 30, 2008

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)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Enhancement of 5% for an NOV for same or similar violations and 10% reduction for the Respondent's classification as a high performer.

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

Screening Date 22-May-2009 **Docket No.** 2009-0782-MSW-E **PCW**
Respondent RAPID ENVIRONMENTAL SERVICES, LLC *Policy Revision 2 (September 2002)*
Case ID No. 37688 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105644421
Media [Statute] Used Oil Filter
Enf. Coordinator Michael Meyer

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code §§ 324.4(2)(C)(i) and 328.24(a)
Violation Description Failed to have a valid registration with the TCEQ prior to storing, processing, recycling or disposing of used oil and used oil filters.
Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential			0%

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification	x			
				10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$2,250 \$250

Violation Events

Number of Violation Events Number of violation days
mark only one with an x
 daily
 weekly
 monthly
 quarterly
 semiannual
 annual
 single event
Violation Base Penalty \$500

Two monthly events are recommended from the April 20, 2009 investigation to the May 22, 2009 screening date.

Good Faith Efforts to Comply Reduction \$0

Before NOV NOV to EDPRP/Settlement Offer
 Extraordinary
 Ordinary
 N/A (mark with x)
Notes The Respondent does not meet the good faith criteria for this violation.
Violation Subtotal \$500

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

Estimated EB Amount \$1 **Violation Final Penalty Total** \$475
This violation Final Assessed Penalty (adjusted for limits) \$475

Economic Benefit Worksheet

Respondent RAPID ENVIRONMENTAL SERVICES, LLC

Case ID No. 37688

Reg. Ent. Reference No. RN105644421

Media Used Oil Filter

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
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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	\$25	20-Apr-2009	15-Jan-2010	0.74	\$1	n/a	\$1
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and mail a Used Oil Handler Registration. The Date Required is date of the investigation and the Final Date is the projected 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 \$25

TOTAL \$1

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 328, SubChapter D 328.25(b)		
Description:	Failure to retain appropriate records for three years.		
Self Report?	NO	Classification:	Moderate
Citation:	40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.43(a)		
Description:	Failure to have oil deliveries made to registered used oil receivers/handlers.		
Self Report?	NO	Classification:	Moderate
Citation:	40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.44(d)		
Description:	Failure to have analyses to support rebuttable presumption retained for three years.		
Self Report?	NO	Classification:	Moderate
Citation:	40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.45(d) 40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.45(e) 40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.45(f)		
Description:	Failure to have containers used to store used oil equipped with a secondary containment system.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 328, SubChapter D 328.26(d)		
Description:	Failure to have each container clearly labeled with the phrase "Used Oil Filters."		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

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
RAPID ENVIRONMENTAL
SERVICES, LLC;
RN105644421**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-0782-MSW-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Rapid Environmental Services, LLC (“Rapid Env. Svcs.”) under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE chs. 361 and 371. The Executive Director of the TCEQ, represented by the Litigation Division, and Rapid Env. Svcs. appear before the Commission and together stipulate that:

1. Rapid Env. Svcs. owns and operates a used oil and used oil filter handling facility located at 3505 Lee Boulevard, El Paso, El Paso County, Texas (the “Facility”).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE chs. 361 and 371 and TCEQ rules.
3. The Commission and Rapid Env. Svcs. agree that the Commission has jurisdiction to enter this Agreed Order, and that Rapid Env. Svcs. is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Rapid Env. Svcs. of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of four hundred seventy-five dollars (\$475.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Rapid Env. Svcs. paid four hundred seventy-five dollars (\$475.00) of the administrative penalty.

6. 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.
7. The Executive Director of the TCEQ and Rapid Env. Svcs. agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that Rapid Env. Svcs. obtained Used Oil Registration #A85991 on September 15, 2009.
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 Rapid Env. Svcs. 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

1. During a record review conducted on April 20, 2009, a TCEQ El Paso Regional Office investigator documented that Rapid Env. Svcs. violated 30 TEX. ADMIN. CODE §§ 324.4(2)(C)(i) and 328.24(a) by failing to have a valid registration with the TCEQ prior to storing, processing, recycling or disposing of used oil and used oil filters.
2. Rapid Env. Svcs. received notice of the violation on or about May 6, 2009.

III. DENIALS

Rapid Env. Svcs. generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Rapid Env. Svcs. pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and Rapid Env. Svcs.'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Rapid Environmental Services, LLC, Docket No. 2009-0782-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. The provisions of this Agreed Order shall apply to and be binding upon Rapid Env. Svcs. 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against Rapid Environmental 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.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to Rapid Environmental, or three days after the date on which the Commission mails notice of this Agreed Order to Rapid Env. Svcs., 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



For the Executive Director

4/19/2010

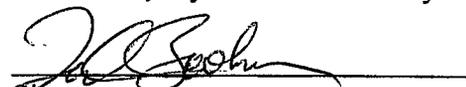
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Rapid Env. Svcs.'s compliance history;
- Greater scrutiny of any permit applications submitted by Rapid Env. Svcs.;
- 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 against Rapid Env. Svcs.;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Rapid Env. Svcs.; and
- TCEQ seeking other relief as authorized by law.

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



Signature

12-15-09

Date

Ted Booker

Name (Printed or typed)
Authorized representative of
Rapid Environmental Services, LLC

President

Title