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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-0825-IWD-E **TCEQ ID:** RN101983278 **CASE NO.:** 39726
RESPONDENT NAME: Plainview BioEnergy, 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 AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" 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 type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Plainview BioEnergy, located adjacent to and north of the intersection of Farm-to-Market Road 789 and United States Highway 70, approximately four miles southeast of Plainview, Hale County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 23, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-0321; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Chuck Fryar, Plant Manager, Plainview BioEnergy, LLC, 2698 East Highway 70, Plainview, Texas 79072 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 5, 2010</p> <p>Date of NOV/NOE Relating to this Case: May 12, 2010 (NOE)</p> <p>Background Facts: This was a records review.</p> <p>WATER</p> <p>Failure to maintain an industrial wastewater discharge permit. Specifically, the Respondent continued to operate a wastewater treatment facility after its existing permit expired on March 1, 2010 [TEX. WATER CODE § 26.121 and 30 TEX. ADMIN. CODE §§ 305.125(2) and 305.65].</p>	<p>Total Assessed: \$3,660</p> <p>Total Deferred: \$732 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,928</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" 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>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 300 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits in expired Texas Pollutant Discharge Elimination System Permit No. WQ0004829000;</p> <p>b. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application;</p> <p>c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and</p> <p>d. Within 300 days after the effective date of this Agreed Order, submit written certification that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): WQ0004829000



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	17-May-2010		
	PCW	21-May-2010	Screening	20-May-2010
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Plainview BioEnergy, LLC		
Reg. Ent. Ref. No.	RN101983278		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39726	No. of Violations	1
Docket No.	2010-0825-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Harvey Willson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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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	22.0% Enhancement	Subtotal 2, 3, & 7	\$660
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Notes: An enhancement is recommended for the four self reported effluent violations and the seven NOV's for non-similar violations previously received.

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: \$312
 Approx. Cost of Compliance: \$5,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,660
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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	\$3,660
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,660
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DEFERRAL	20.0% Reduction	Adjustment	-\$732
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,928
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Screening Date: 20-May-2010

Docket No.: 2010-0825-IWD-E

PCW

Respondent: Plainview BioEnergy, LLC

Policy Revision 2 (September 2002)

Case ID No.: 39726

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN101983278

Media [Statute]: Water Quality

Enf. Coordinator: Harvey Wilson

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)	0	0%
	Other written NOVs	11	22%
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%

Please Enter Yes or No

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) 22%

>> **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

An enhancement is recommended for the four self reported effluent violations and the seven NOVs for non-similar violations previously received.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

Screening Date 20-May-2010

Docket No. 2010-0825-IWD-E

PCW

Respondent Plainview BioEnergy, LLC

Policy Revision 2 (September 2002)

Case ID No. 39728

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101983278

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121 and 30 Tex. Admin. Code §§ 305.125(2) and 305.65

Violation Description

Failed to maintain an industrial wastewater discharge permit. Specifically, the Respondent continued to operate a wastewater treatment facility after its existing permit expired on March 1, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

80 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,000

Three monthly events are recommended from the date the permit expired (March 1, 2010) until the date of screening (May 20, 2010).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	Before NOV	NOV to EDRP/Settlement
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

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

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$625

Violation Final Penalty Total \$3,660

This violation Final Assessed Penalty (adjusted for limits) \$3,660

Economic Benefit Worksheet

Respondent Plainview BioEnergy, LLC
Case ID No. 39728
Reg. Ent. Reference No. RN101983278
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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	\$10,000	1-Mar-2010	31-May-2011	1.25	\$625	n/a	\$625
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of obtaining a new discharge permit. Date Required is the date the permit expired. 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

\$10,000

TOTAL

\$625

6	11/18/2008	(708130)
7	11/18/2008	(708141)
8	11/18/2008	(708422)
9	01/13/2009	(733949)
10	01/13/2009	(733950)
11	01/13/2009	(733951)
12	01/13/2009	(733952)
13	01/13/2009	(733953)
14	01/13/2009	(733954)
15	01/13/2009	(733955)
16	01/13/2009	(733956)
17	01/29/2009	(724833)
18	01/29/2009	(724835)
19	02/03/2009	(725101)
20	02/10/2009	(757065)
21	02/25/2009	(736470)
22	03/10/2009	(757066)
23	03/13/2009	(738465)
24	04/06/2009	(757067)
25	05/04/2009	(744059)
26	05/18/2009	(773883)
27	05/29/2009	(746753)
28	06/03/2009	(773884)
29	07/08/2009	(761352)
30	10/09/2009	(778835)
31	01/27/2010	(786115)
32	05/14/2010	(801594)

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

Date:	02/02/2007 (538383)	CN603145491
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	
Description:	Site could not produce SWPPP at time of investigation.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	
Description:	Failure to post NOI at a location that is readily available and maintained until construction is completed, as required. CGP Part II, Section D(3)(d)	
Date:	05/31/2008 (733949)	CN603145491
Self Report?	YES	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	06/30/2008 (733950)	CN603145491
Self Report?	YES	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	08/21/2008 (700259)	CN603145491
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-6(a)(1) 5C THSC Chapter 382 382.085(b) Special Condition No. 14.E. PERMIT	
Description:	Failure to equip open ended lines with a cap, blind flange, plug, or a second valve in violation of 30 TAC §116.115(c), Permit No. 78440 SC 14.E., 40 CFR §60.482-6(a)(1), and 5C THSC §382.085(b).	
Date:	09/30/2008 (733953)	CN603145491

Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 11/10/2008 (707095) CN603145491
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 5C THSC Chapter 382 382.085(b)
 78440 PERMIT
 Description: Failure to submit final stack test report within 60 days of stack test.
 Date: 11/18/2008 (708141) CN603145491

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 5C THSC Chapter 382 382.085(b)
 78440 PERMIT
 Description: Failure to submit the performance stack test report within 60 days of conducting the stack test.
 Date: 11/18/2008 (708130) CN603145491

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 5C THSC Chapter 382 382.085(b)
 78440 PERMIT
 Description: Failure to submit the performance stack test report within 60 days of performing the stack test.
 Date: 02/26/2009 (736470) CN603145491

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)
 30 TAC Chapter 319, SubChapter A 319.7(c)
 Description: Failure to maintain records of calibration of the pH meter utilized for daily measurements.
 Date: 02/28/2009 (757066) CN603145491

Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 05/29/2009 (746753) CN603145491

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
 Description: Failure to prepare a Plant Operations Manual.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
 Description: Failure to provide adequate pressure tank capacity.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)
 Description: Failure to develop and implement a system-specific Monitoring Plan.

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
PLAINVIEW BIOENERGY, LLC
RN101983278**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-0825-IWD-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 Plainview BioEnergy, LLC ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. 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 wastewater treatment facility located adjacent to and north of the intersection of Farm-to-Market Road 789 and United States Highway 70, approximately four miles southeast of Plainview, Hale County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 May 17, 2010.
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 Three Thousand Six Hundred Sixty Dollars (\$3,660) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Nine Hundred Twenty-Eight Dollars

(\$2,928) of the administrative penalty and Seven Hundred Thirty-Two Dollars (\$732) 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.

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 failed to maintain an industrial wastewater discharge permit, in violation of TEX. WATER CODE § 26.121 and 30 TEX. ADMIN. CODE §§ 305.125(2) and 305.65, as documented during a record review conducted on May 5, 2010. Specifically, the Respondent continued to operate a wastewater treatment facility after its existing permit expired on March 1, 2010.

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: Plainview BioEnergy, LLC, Docket No. 2010-0825-IWD-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. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 300 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits in expired Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004829000;
- b. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application, in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Water Quality Applications Team, Permits Administrative Review Section
Registration, Review and Reporting Division, MC 161
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and
- d. Within 300 days after the effective date of this Agreed Order, submit written certification that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-30870

with a copy to:

Manager, Waste Section
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

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 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 under this Agreed Order.
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 Szollier
For the Executive Director

8/13/2010
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.

Chuck Frym
Signature

June 11, 2010
Date

Chuck Frym
Name (Printed or typed)
Authorized Representative of
Plainview BioEnergy, LLC

Plant Manager
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.

