

Bryan W. Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 10, 2015

The Honorable Travis Vickery
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
Austin, Texas 78711-3025

Re: The Executive Director's Exceptions to the ALJ's Proposed Order;
SOAH Docket No. 582-14-2870; TCEQ Docket No. 2013-0374-MLM-E

Dear Judge Vickery:

On June 6, 2015, the Executive Director filed Exceptions to the ALJ's Proposed Order in the matter regarding Ted Booher and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC (the "Exceptions"). It has come to the Executive Director's attention that the first page of the Exceptions was mistakenly styled with SOAH Docket No. 582-14-1588 and TCEQ Docket No. 2012-2471-MLM-E. These Docket Nos. are assigned to a separate enforcement case. The correct styling for this matter is SOAH Docket No. 582-14-2870 and TCEQ Docket No. 2013-0374-MLM-E. Attached is a corrected version of the Exceptions that was also filed with the Office of the Chief Clerk today. Thank you for your attention to this matter, and I apologize for the inconvenience. If you have any questions, please do not hesitate to call me at (512) 239-0619.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Terry".

David A. Terry, Attorney
Litigation Division

Enclosures

cc: Bridget Bohac, Office of the Chief Clerk
Frank S. Ainsa, Jr., Counsel for Respondents

**SOAH DOCKET NO. 582-14-2870
TCEQ DOCKET NO. 2013-0374-MLM-E**

**EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner**

V.

**TED BOOHER AND RAPID MARINE
FUELS, LLC DBA RAPID
ENVIRONMENTAL SERVICES, LLC;
RN101061422
Respondents**

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BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

THE EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ALJ'S PROPOSED ORDER

TO THE HONORABLE TRAVIS VICKERY:

The Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ"), after reviewing the Administrative Law Judge's (ALJ) Proposal for Decision ("PFD"), respectfully files the following exceptions to the Proposed Order¹:

Ordering Provisions

In Ordering Provision Nos. 1, 2, and 3, the ED respectfully recommends that the word "the" preceding the word "Commission Order" be changed to "this" for consistency with the terminology used in the remaining Ordering Provisions.

In Ordering Provision No. 1, the ED respectfully requests that the ALJ change the due date of the administrative penalty from within 15 days of the Order to within 30 days of the Order in order to be consistent with the administrative penalty due date for other Commission issued orders. The ED also respectfully recommends that the notation required to be included on administrative penalty payments be changed from "Rapid Environmental Services, LLC, Account No. 20038412," to read "Ted Booher and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC; TCEQ Docket No. 2013-0374-MLM-E." This change is requested to provide clarity that the payment received from Respondents is associated with the referenced enforcement case docket number rather than Account No. 20038412, which is a TCEQ program fee account associated with the Respondents.

¹ A redline version of the Proposed Order with the ED's recommended changes is attached hereto as Attachment A.

The ED respectfully requests that the ALJ add proposed Ordering Provision No. 2 to the Ordering Provisions section to read as follows:

2. Within 15 days after the effective date of this Commission Order, Respondents shall submit payment for outstanding fees, including any associated penalties and interest, with the notation "Rapid Environmental Services, LLC, Account No. 20038412," to:

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

The above proposed Ordering Provision was included in the Respondents' stipulations and the ED's Second Amended Report and Petition.² This corrective action is necessary to resolve the violation documented in Findings of Fact No. 3 of the Proposed Order. If the ALJ accepts the ED's proposed Ordering Provision, the numbering of the subsequent Ordering Provisions would need to be renumbered and changed to Nos. 3 through 9.

Prayer

The ED respectfully requests the ALJ consider the ED's exceptions above.

² See Proposed Joint Stipulations and Motion for Approval, paragraph no. 10.a., pg. 2, and ED's Second Amended Report and Petition, paragraph no. 14.a., pg. 3, attached hereto as Attachments B and C.

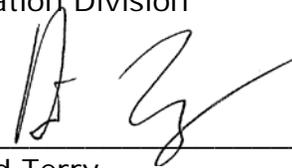
Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Caroline M. Sweeney, Deputy Director
Office of Legal Services

Kathleen C. Decker, Director
Litigation Division

by  _____

David Terry
State Bar of Texas No. 24079447
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (Fax)
David.Terry@tceq.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 10 2015, the foregoing document was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day the foregoing document was delivered as indicated:

Via Electronic Filing

The Honorable Administrative Law Judge Travis Vickery
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

Via Certified Mail, Return Receipt Requested and Electronic Mail

Francis S. Ainsa, Jr.
Ainsa Hutson, LLP
5809 Acacia Circle
El Paso, Texas 79912
Electronic Mail: fain@acaciapark.com
Article No. 7004 1350 0002 7546 8219

Via Electronic Mail

Eli Martinez
Office of the Public Interest Counsel
Texas Commission on Environmental Quality



David A. Terry

ATTACHMENT A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST
AND ORDERING CORRECTIVE ACTION BY
TED BOOHER AND RAPID MARINE FUELS, LLC
D/B/A RAPID ENVIRONMENTAL SERVICES, LLC
TCEQ DOCKET NO. 2013-0374-MLM-E;
SOAH DOCKET NO. 582-14-2870**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Second Amended Report and Petition (EDSARP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Ted Booher and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC (Respondents). A proposal for decision (PFD) was presented by Travis Vickery, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. Respondents own and operate a used oil and used oil filter handling and processing facility located at 7815 Highway 225 in La Porte, Harris County, Texas (Facility). The Facility contains or involves the management of industrial hazardous waste and used oil as defined in Texas Health & Safety Code chs. 361 and 371.

2. During an investigation of the Facility conducted on October 25, 2012, a TCEQ investigator documented that Respondents violated the following requirements:
 - a. 30 Texas Administrative Code § 335.62 and 40 Code of Federal Regulations (C.F.R.) § 262.11, by failing to conduct hazardous waste determinations for waste at the Facility. Specifically, Respondents were not conducting hazardous waste determinations for the wastewater generated from the used oil tanker processing unit, sludge or oily solids generated from used oil processing, heavily soaked oily rags, and used oil filters; and
 - b. 30 Texas Administrative Code §§ 328.24(e) and 324.22(c), by failing to provide evidence of financial responsibility with registration to assure the Facility has sufficient assets to provide for proper closure.
3. During a record review conducted on March 7, 2013, a TCEQ employee documented that Respondents violated Texas Water Code §§ 5.702 and 26.0291, by failing to pay outstanding general stormwater permit fees for TCEQ Financial Account No. 20038412 for fiscal years 2011 and 2012.
4. On September 11, 2013, the Executive Director filed the Executive Director's Preliminary Report and Petition (EDPRP), in accordance with Texas Water Code § 7.504, alleging that Respondents committed the above violations and recommended that the Commission enter an order assessing an administrative penalty against the Respondents for the violations. The Executive Director also recommended that the Commission order Respondents to take certain corrective actions.
5. Respondents received notice of the violations in the EDPRP on or about September 13, 2013.
6. On December 19, 2013, Respondents filed a request for hearing.
7. The Commission's Chief Clerk referred this case to the State Office of Administrative Hearings (SOAH) for hearing.
8. On April 1, 2014, the Commission's Chief Clerk sent a notice of preliminary hearing to Respondent, the Executive Director, and the Office of Public Interest Counsel.
9. The notice of hearing:
 - a. Indicated the time, date, place, and nature of the hearing;
 - b. Stated the legal authority and jurisdiction for the hearing;
 - c. Indicated the statutes and rules the Executive Director alleged that Respondent violated; and

- d. Referred to the EDPRP, which was attached and stated the facts and violations asserted by the Executive Director.
10. On April 23, 2014, the Executive Director filed an agreed motion to waive the preliminary hearing, admit exhibits to show jurisdiction, and set the hearing on the merits for September 4, 2014. An ALJ granted the motion.
11. On or before September 4, 2014, Respondents raised financial inability to pay (FIP) claims.
12. On September 3, 2014, the hearing on the merits was continued, on agreed motion of the parties, to give them time to attempt to settle. The hearing on the merits was re-set for December 3, 2014.
13. On November 11, 2014, Respondents entered into a written agreement with the Executive Director. Respondents agreed to stipulate to the alleged violations and the proposed penalty if Respondents did not submit all required financial documents by December 17, 2014, and qualify for the FIP program, as determined by the TCEQ Financial Administration Division.
14. On November 14, 2014, the Executive Director filed the Executive Director's First Amended Report and Petition (EDFARP), in accordance with Texas Water Code § 7.504, alleging that Respondents committed the violations, as listed in paragraph Nos. 2 and 3, and recommending that the Commission enter an order assessing an administrative penalty against the Respondents for the violations. The Executive Director also recommended that the Commission order Respondents to take certain corrective actions.
15. Respondents received notice of the violations in the EDFARP on or about November 20, 2014.
16. On November 20, 2014, the hearing on the merits was continued, on agreed motion of the parties, to give them time to attempt to settle. The continuance was later extended, at the parties' request, to give them more time to attempt to settle.
17. The Respondents did not submit all of the requested financial documents by the December 17, 2014 deadline. The Executive Director extended the deadline to submit the requested financial documents to February 9, 2015, in order to allow the Respondents more time to submit financial information.
18. On December 17, 2014, the Executive Director filed a motion to approve Respondents' stipulations wherein they stipulated that the alleged violations occurred, that the administrative penalty of \$18,815 was calculated in accordance with the TCEQ penalty policy, and the factors in Texas Water Code § 7.053, and that the recommended corrective actions are necessary and appropriate. The ALJ granted the motion.

19. Respondents have not submitted financial documents showing they qualify for the FIP program.
20. More than 30 days have passed since Respondents raised their FIP claims.
21. Respondents have not submitted documentation to show that the Facility is no longer operating and that all wastes have been disposed of properly.
22. On February 27, 2015, the Executive Director filed the Executive Director's Second Amended Report and Petition (EDSARP), in accordance with Texas Water Code § 7.054, alleging that Respondents committed the violations, as listed in paragraph Nos. 2 and 3, and recommending that the Commission enter an order assessing a total administrative penalty of \$18,815 against Respondents for the violations. The Executive Director also recommended that the Commission order Respondents to take certain corrective actions, which are set out below in this order.
23. Respondents received notice of the violations in the EDSARP on or about March 4, 2015.
24. Respondents have stipulated that they committed the violations alleged in the EDSARP and should be assessed an \$18,815 penalty for the violations, as proposed in the EDSARP.
25. On February 27, 2015, the Executive Director filed a motion for summary disposition of this case and served it on Respondents by certified mail and on the Office of Public Interest Counsel (OPIC) by electronic mail.
26. Respondents did not file a response to the motion for summary disposition.
27. OPIC did not oppose the motion for summary disposition.
28. On April 22, 2015, the ALJ admitted in evidence the exhibits attached to the motion for summary disposition and granted the motion.
29. The exhibits attached to the motion for summary disposition and the pleadings in this case show that there is no genuine issue as to any material fact and the Executive Director is entitled to summary disposition as a matter of law on all of the issues in this case.

II. CONCLUSIONS OF LAW

1. The Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder. Tex. Water Code § 7.051.
2. The Commission may also order a violator to take corrective action. Tex. Water Code § 7.073.

3. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
4. Respondents were notified of the EDPRP, EDFARP, and EDSARP and of the opportunity to request a hearing on the alleged violations and the penalties and corrective actions proposed therein. Tex. Water Code § 7.055; 30 Tex. Admin. Code §§ 1.11, 70.104.
5. Respondents were notified of the hearing on the alleged violations and of the opportunity to request a hearing on the proposed penalties and corrective actions. Tex. Gov't Code §§ 2001.051 and .052; Tex. Water Code § 7.058; 1 Tex. Admin. Code § 155.401; 30 Tex. Admin. Code §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
6. Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response. 30 Tex. Admin. Code § 80.137(c).
7. In this case, the pleadings, admissions, stipulations, and public records on file show that summary disposition should be granted to the Executive Director and against Respondents.
8. Respondents violated Texas Water Code §§ 5.702 and 26.0291; 40 C.F.R. §§ 262.11; and 30 Texas Administrative Code §§ 324.22(c), 328.24(e), and 335.62.
9. Respondents have waived their FIP claim. 30 Tex. Admin. Code § 70.8(b).
10. The \$18,815 administrative penalty sought in the EDSARP was properly calculated in accordance with the TCEQ Penalty Policy (September 1, 2011) and in consideration of the factors outlined in Texas Water Code § 7.053.
11. Respondents should be assessed a penalty of \$18,815 for its violations proven in this case.
12. The corrective actions recommended in the EDSARP are necessary to bring the Facility into compliance with the requirements of Texas Health and Safety Code chs. 361 and 371; 40 C.F.R. Part 262; and 30 Texas Administrative Code chs. 324, 328, and 335.
13. Respondents should be ordered to take the corrective actions recommended in the EDSARP.

III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Within ~~15-30~~ days after the effective date of ~~this~~ Commission Order, Respondents shall pay an administrative penalty of \$18,815 for violations of Texas Water Code §§ 5.702 and 26.0291; 40 C.F.R. §§ 262.11; and 30 Texas Administrative Code §§ 324.22(c), 328.24(e), and 335.62. The payment of this administrative penalty and the performance of all corrective actions listed herein will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made out to “TCEQ,” and sent with the notation “Ted Booher and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC; Account No. 20038412” TCEQ Docket No. 2013-0374-MLM-E,” to:

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

2. Within 15 days after the effective date of this Commission Order, Respondents shall submit payment for outstanding fees, including any associated penalties and interest, with the notation “Rapid Environmental Services, LLC, Account No. 20038412,” to:

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

- ~~2.3.~~ Within 30 days after the effective date of ~~this~~ Commission Order, Respondents shall:

- a. Begin conducting hazardous waste determinations for all Class 2 wastes, including wastewater generated from the used oil tanker processing unit, sludge or oily solids generated from used oil processing, heavily soaked oily rags, and used oil filters, in accordance with 30 Texas Administrative Code § 335.62 and 40 C.F.R. § 262.11; and
- b. Submit documentation that demonstrates acceptable financial assurance for proper closure of the Facility, in accordance with 30 Texas Administrative Code §§ 328.24(e) and 324.22(c) to:

Financial Assurance Team, MC 184

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Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- 3-4. Within 45 days after the effective date of ~~the~~this Commission Order, Respondents shall submit written certification to demonstrate compliance with Corrective Action Ordering Provisions Nos. 2.a. and 2.b. The certification required by these Corrective Action Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondents, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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.”

Respondents shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk St., Suite H
Houston, Texas 77023-1452

- 4-5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Commission Order.

- 5-6. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

- | ~~6-7.~~ The effective date of this Commission Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
- | ~~7-8.~~ The Commission's Chief Clerk shall forward a copy of this Commission Order to Respondents.
- | ~~8-9.~~ If any provision, sentence, clause, or phrase of this Commission Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman
For the Commission

ATTACHMENT B

Bryan W. Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

December 17, 2014

Via Electronic Filing

The Honorable Judge Travis Vickery
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

Re: Proposed Joint Stipulations and Motion for Approval:
Ted Booher and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC;
TCEQ Docket No. 2013-0374-MLM-E; SOAH Docket No. 582-14-2870

Dear Judge Vickery:

Enclosed is a true and correct copy of the "Proposed Joint Stipulations and Motion for Approval" ("Motion").

The original of this Motion was filed with the Office of the Chief Clerk of the Texas Commission on Environmental Quality on this day.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Terry", written over a white background.

David A. Terry
Attorney
Litigation Division

Enclosure

SOAH DOCKET NO. 582-14-2870
TCEQ DOCKET NO. 2013-0374-MLM-E

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER

VS.

TED BOOHER AND RAPID MARINE
FUELS, LLC D/B/A RAPID
ENVIRONMENTAL SERVICES, LLC,
RESPONDENT

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BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

PROPOSED JOINT STIPULATIONS AND MOTION FOR APPROVAL

COMES NOW, the Executive Director, Ted Booher, and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC, and file the joint agreed proposed stipulations below and request the Administrative Law Judge's approval pursuant to 1 TEX. ADMIN. CODE § 155.41.

I. PROPOSED STIPULATIONS

1. Ted Booher and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC (collectively "Respondents") own and operate a used oil and used oil filter handling and processing facility located at 7815 Highway 225 in La Porte, Harris County, Texas (the "Facility"). The Facility contains or involves the management of industrial hazardous waste and used oil as defined in TEX. HEALTH & SAFETY CODE ch. 361 and 371.
2. During an investigation conducted on October 25, 2012, the Respondents violated:
 - a. 40 C.F.R. § 262.11 and 30 TEX. ADMIN. CODE § 335.62, by failing to conduct hazardous waste determinations for waste at the Facility. Specifically, Respondents were not conducting hazardous waste determinations for the wastewater generated from the used oil tanker processing unit, sludge or oily solids generated from used oil processing, heavily soaked oily rags, and used oil filters; and
 - b. 30 TEX. ADMIN. CODE §§ 328.24(e) and 324.22(c), by failing to provide evidence of financial responsibility with registration to assure the Facility has sufficient assets to provide for proper closure.
3. The Respondents did not pay outstanding general stormwater permit fees for TCEQ Financial Account No. 20038412 for fiscal years 2011 and 2012, in violation of TEX. WATER CODE §§ 5.702 and 26.0291.
4. The Executive Director considered the factors outlined in TEX. WATER CODE § 7.053 in calculating the penalty.
5. Based on the facts supporting the violations, and having considered the above-described factors, the Executive Director properly calculated an administrative penalty in the amount of eighteen thousand eight hundred fifteen dollars (\$18,815.00).

6. The penalty calculation worksheets ("PCWs") (Attachments "A" and "B") set forth each documented violation and the statutory factors the Executive Director considered in determining the recommended administrative penalty.
7. The Executive Director followed an established Penalty Policy approved by the Commission in calculating the penalty in this enforcement action. See Texas Commission on Environmental Quality Penalty Policy (September 1, 2011).
8. The Respondents agree the penalty the Executive Director is seeking of eighteen thousand eight hundred fifteen dollars (\$18,815.00) is calculated in accordance with the TCEQ Penalty Policy and the calculation does not violate that policy.
9. Pursuant to TEX. WATER CODE § 7.073, if a person violates any statute or rule within the Commission's jurisdiction, the Commission may order the person to take corrective action.
10. The Respondents agree to undertake the following corrective actions:
 - a. Within 15 days after the effective date of the Commission Order, Respondents shall submit payment for outstanding fees, including any associated penalties and interest, with the notation "Rapid Environmental Services, LLC, Account No. 20038412," to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
 - b. Within 30 days after the effective date of the Commission Order, Respondents shall:
 - i. Begin conducting hazardous waste determinations for all Class 2 wastes, including wastewater generated from the used oil tanker processing unit, sludge or oily solids generated from used oil processing, heavily soaked oily rags, and used oil filters, in accordance with 30 TEX. ADMIN. CODE § 335.62 and 40 C.F.R. § 262.11; and
 - ii. Submit documentation that demonstrates acceptable financial assurance for proper closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 328.24(e) and 324.22(c) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - c. Within 45 days after the effective date of the Commission Order, Respondents shall submit written certification to demonstrate compliance with Corrective Action Ordering Provisions Nos. 15.a. and 15.b. The certification required by these Corrective Action Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondents, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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."

Respondents shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk St., Suite H
Houston, Texas 77023-1452

II. PRAYER

ACCORDINGLY, the Executive Director, Ted Booher, and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC respectfully submit these Proposed Joint Stipulations and request they be approved by the Administrative Law Judge in accordance with 1 TEX. ADMIN. CODE § 155.417.

Respectfully submitted,

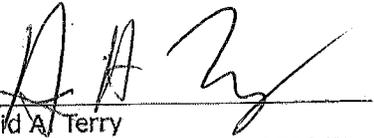
Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Caroline M. Sweeney, Deputy Director
Office of Legal Services

Kathleen C. Decker, Division Director
Litigation Division

by 
Ted Booher, individually, and
on behalf of, Rapid Marine Fuels, LLC
7815 Highway 225
La Porte, Texas 77571

by 
David A. Terry
State Bar of Texas No. 24079447
TCEQ Office of Legal Services
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)
David.Terry@tceq.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of Dec., 2014, the original of the foregoing "Proposed Joint Stipulations and Motion for Approval" ("Motion") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Motion was mailed via Certified Mail, postage prepaid, to:

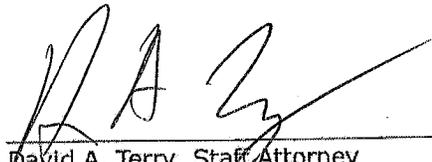
The Honorable Travis Vickery
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

Ted Booher
7815 Highway 225
La Porte, Texas 77571

Ted Booher, President
Rapid Marine Fuels, LLC
7815 Highway 225
La Porte, Texas 77571

Francis S. Ainsa, Jr.
Ainsa Hutson, LLP
5909 Acacia Circle
El Paso, Texas 79912

I further certify that on this day a true and correct copy of the foregoing Motion was electronically delivered to Eli Martinez, TCEQ Office of Public Interest Counsel, at eli.martinez@tceq.texas.gov.



David A. Terry, Staff Attorney
Office of Legal Services
Litigation Division
Texas Commission on Environmental Quality

**ATTACHMENT A
PENALTY CALCULATION WORKSHEET**



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	11-Feb-2013	Screening	19-Feb-2013	EPA Due	
	PCW	18-Nov-2014				

RESPONDENT/FACILITY INFORMATION	
Respondent	Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Reg. Ent. Ref. No.	RN101061422
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46265	No. of Violations	2
Docket No.	2013-0374-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media	Used Oil	Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
---	-------------------	----------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	10.0% Enhancement	Subtotals 2, 3, & 7	\$1,500
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Notes: Enhancement due to unsatisfactory classification.

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	\$840
Approx. Cost of Compliance	\$16,800

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$16,500
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$16,500

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$16,500
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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	\$16,500
------------------------	----------

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RA

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Danielle Porras

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 0%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement due to unsatisfactory classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 10%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 10%

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRON

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.62 and 40 Code of Federal Regulations § 262.11

Violation Description Failed to conduct hazardous waste determinations for waste at the Facility. Specifically, the Respondent was not conducting hazardous waste determinations for the wastewater generated from the used oil tanker processing unit, sludge or oily solids generated from used oil processing, heavily soaked oily rags, and used oil filters.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (15.0%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0.0%).

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 4 Number of violation days 4

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event. Includes note 'mark only one with an x'.

Violation Base Penalty \$15,000

Four single events (one event for each waste stream) are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. Columns: Before NOV, NOV to EDPRP/Settlement Offer.

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

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$840

Violation Final Penalty Total \$16,500

This violation Final Assessed Penalty (adjusted for limits) \$16,500

Economic Benefit Worksheet

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Case ID No. 46265
Reg. Ent. Reference No. RN101061422
Media Industrial and Hazardous Waste
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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

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)	\$16,800	25-Oct-2012	25-Oct-2013	1.00	\$840	n/a	\$840

Notes for DELAYED costs

Estimated cost to conduct waste determinations and classifications on four waste streams. The Date Required is the investigation date and 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

\$16,800

TOTAL

\$840

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRON

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s) Tex. Water Code §§ 5.702 and 26.0291

Violation Description Failed to pay outstanding general stormwater permit fees for TCEQ Financial Account No. 20038412 for fiscal years 2011 and 2012.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0.0%)

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%)

Matrix Notes No penalty is calculated for this violation.

Adjustment \$25,000

\$0

Violation Events

Number of Violation Events [] Number of violation days []

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event

Violation Base Penalty \$0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer

Notes

Violation Subtotal \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Case ID No. 46265
Reg. Ent. Reference No. RN101061422
Media Industrial and Hazardous Waste
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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

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

N/A

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

\$0

TOTAL

\$0

**ATTACHMENT B
PENALTY CALCULATION WORKSHEET**



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	11-Feb-2013	Screening	19-Feb-2013	EPA Due	
	PCW	18-Nov-2014				

RESPONDENT/FACILITY INFORMATION	
Respondent	Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Reg. Ent. Ref. No.	RN101061422
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46265	No. of Violations	1
Docket No.	2013-0374-MLM-E	Order Type	1660
Media Program(s)	Used Oil	Government/Non-Profit	No
Multi-Media	Industrial and Hazardous Waste	Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
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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	10.0% Enhancement	Subtotals 2, 3, & 7	\$25
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Notes	Enhancement due to unsatisfactory classification.
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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
--	-------------------	-----

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$2,040	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,943	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$275
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OTHER FACTORS AS JUSTICE MAY REQUIRE	741.8%	Adjustment	\$2,040
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance associated with the violation.
--------------	--

Final Penalty Amount	\$2,315
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,315
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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	\$2,315
------------------------	---------

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RA

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Used Oil

Enf. Coordinator Danielle Porras

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 0%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement due to unsatisfactory classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 10%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 10%

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRON

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Used Oil

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 328.24(e) and 324.22(c)

Violation Description Failed to provide evidence of financial responsibility with registration to assure the Facility has sufficient assets to provide for proper closure.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (5.0%). Matrix Notes: 100% of the rule requirement was not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 365

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual (marked with x), single event.

Violation Base Penalty \$250

One annual event is recommended for the 12-month period preceding the October 25, 2012 investigation.

Good Faith Efforts to Comply

Table for Good Faith Efforts: 0.0% Reduction. Columns: Before NOV, NOV to EDPRP/Settlement Offer. Rows: Extraordinary, Ordinary, N/A (marked with x).

\$0

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,040

Violation Final Penalty Total \$2,315

This violation Final Assessed Penalty (adjusted for limits) \$2,315

Economic Benefit Worksheet

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Case ID No. 46265
Reg. Ent. Reference No. RN101061422
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
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]	\$1,943	25-Oct-2011	25-Oct-2012	1.00	\$97	\$1,943	\$2,040
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the closure of 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 \$1,943

TOTAL \$2,040

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City, State

PS Form 3800, June 2002

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AINSA HUTSON, LLP
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City, State

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ATTACHMENT C

TCEQ DOCKET NO. 2013-0374-MLM-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION	§	
AGAINST	§	TEXAS COMMISSION ON
TED BOOHER AND RAPID MARINE	§	
FUELS, LLC D/B/A RAPID	§	ENVIRONMENTAL QUALITY
ENVIRONMENTAL SERVICES, LLC;	§	
RN101061422	§	

**EXECUTIVE DIRECTOR'S SECOND AMENDED REPORT AND PETITION
RECOMMENDING THAT
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENTER AN ENFORCEMENT ORDER ASSESSING AN ADMINISTRATIVE PENALTY
AGAINST AND REQUIRING CERTAIN ACTIONS OF
TED BOOHER AND RAPID MARINE FUELS, LLC D/B/A RAPID ENVIRONMENTAL
SERVICES, LLC**

INTRODUCTION

1. The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), by and through a representative of the Litigation Division, hereby issues this Second Amended Report and Petition pursuant to TEX. WATER CODE § 7.054 and TEX. WATER CODE chs. 5, 7, and 26; TEX. HEALTH & SAFETY CODE chs. 361 and 371; 40 Code of Federal Regulations ("C.F.R.") Part 262; and 30 TEX. ADMIN. CODE chs. 70 and 324 and 328. Discovery related to this matter is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.
2. Ted Booher and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC (collectively "Respondents") are subject to the enforcement authority of the Commission pursuant to TEX. WATER CODE § 7.002 because the violations alleged herein are within the Commission's general jurisdiction, pursuant to TEX. WATER CODE § 5.013, as they involve violations of the state's used oil and industrial hazardous waste programs.
3. The Executive Director has come to the conclusion that Respondents violated TEX. WATER CODE §§ 5.702 and 26.0291; 40 C.F.R. §§ 262.11; and 30 TEX. ADMIN. CODE §§ 324.22(c), 328.24(e), and 335.62. The Executive Director recommends that the Commission enter an order assessing an administrative penalty against Respondents in the amount of eighteen thousand eight hundred fifteen dollars (\$18,815.00). Further, the Executive Director recommends that the Commission order Respondents to undertake such actions as are necessary to bring operations into compliance with the Texas Water Code, the Texas Health and Safety Code, and TCEQ rules.
4. Effective September 1, 2006, the TCEQ does not issue, amend, or renew permits, registrations, certifications, or licenses to an entity or person if any delinquent penalties or delinquent fees are associated with that entity's/person's 9-digit TCEQ Customer Number (CN), regardless of media and/or facility location.

FACTS SUPPORTING VIOLATIONS

5. Respondents own and operate an used oil and used oil filter handling and processing facility located at 7815 Highway 225 in La Porte, Harris County, Texas (the "Facility"). The Facility contains or involves the management of industrial hazardous waste and used oil as defined in TEX. HEALTH & SAFETY CODE ch. 361 and 371.

6. During an investigation conducted on October 25, 2012, a TCEQ Houston Regional investigator documented that Respondents:
 - a. Failed to conduct hazardous waste determinations for waste at the Facility, in violation of 40 C.F.R. § 262.11 and 30 TEX. ADMIN. CODE § 335.62. Specifically, Respondents were not conducting hazardous waste determinations for the wastewater generated from the used oil tanker processing unit, sludge or oily solids generated from used oil processing, heavily soaked oily rags, and used oil filters; and
 - b. Failed to provide evidence of financial responsibility with registration to assure the Facility has sufficient assets to provide for proper closure, in violation of 30 TEX. ADMIN. CODE §§ 328.24(e) and 324.22(c).
7. During a record review conducted on March 7, 2013, a TCEQ employee documented that Respondents failed to pay outstanding general stormwater permit fees for TCEQ Financial Account No. 20038412 for fiscal years 2011 and 2012, in violation of TEX. WATER CODE §§ 5.702 and 26.0291.

IMPOSITION OF PENALTY

8. Based on the facts supporting the violations, the Executive Director recommends that an administrative penalty be imposed pursuant to TEX. WATER CODE § 7.051. The Commission has the authority to assess an administrative penalty of up to \$25,000 for each day of each violation under TEX. WATER CODE § 7.052.

AMOUNT OF PENALTY

9. In determining the amount of the penalty, the Commission is required by TEX. WATER CODE § 7.053 to consider:
 - a. The nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;
 - b. The impact of the violation on:
 - i. air quality in the region;
 - ii. a receiving stream or underground water reservoir;
 - iii. instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or
 - iv. affected persons;
 - c. With respect to the alleged violator:
 - i. the history and extent of previous violations;
 - ii. the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
 - iii. the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
 - iv. economic benefit gained through the violation; and
 - v. the amount necessary to deter future violations; and

- d. Any other matters that justice may require.
10. Based on the facts supporting the violations, and having considered the above-described factors, the Executive Director recommends that Respondent be required to pay an administrative penalty in the amount of eighteen thousand eight hundred fifteen dollars (\$18,815.00).
11. The penalty calculation worksheets ("PCWs") for the recommended administrative penalty are attached hereto and incorporated herein by reference (Attachments "A" and "B"). The PCWs set forth each alleged violation and the statutory factors the Executive Director considered in determining the recommended administrative penalty.
12. The Executive Director followed an established Penalty Policy approved by the Commission in calculating the penalty in this enforcement action. See Texas Commission on Environmental Quality Penalty Policy (September 1, 2011).

CORRECTIVE ACTION ORDERING PROVISIONS

13. Pursuant to TEX. WATER CODE § 7.073, if a person violates any statute or rule within the Commission's jurisdiction, the Commission may order the person to take corrective action.
14. The Executive Director recommends that Respondents be required to implement the following corrective measures:
- a. Within 15 days after the effective date of the Commission Order, Respondents shall submit payment for outstanding fees, including any associated penalties and interest, with the notation "Rapid Environmental Services, LLC, Account No. 20038412," to:

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

- b. Within 30 days after the effective date of the Commission Order, Respondents shall:
- i. Begin conducting hazardous waste determinations for all Class 2 wastes, including wastewater generated from the used oil tanker processing unit, sludge or oily solids generated from used oil processing, heavily soaked oily rags, and used oil filters, in accordance with 30 TEX. ADMIN. CODE § 335.62 and 40 C.F.R. § 262.11; and
- ii. Submit documentation that demonstrates acceptable financial assurance for proper closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 328.24(e) and 324.22(c) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 45 days after the effective date of the Commission Order, Respondents shall submit written certification to demonstrate compliance with Corrective Action Ordering Provisions Nos. 15.a. and 15.b. The certification required by these Corrective Action Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondents, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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."

Respondents shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk St., Suite H
Houston, Texas 77023-1452

RESPONDENT'S RIGHTS AND RESPONSIBILITIES

15. According to TEX. WATER CODE § 7.056 and the TCEQ's procedural rules, Respondents have a right to a hearing on the occurrence of the violations, the amount of the proposed penalty, or both.

PRAYER

16. ACCORDINGLY, the Executive Director respectfully requests that the Commission enter an order, pursuant to TEX. WATER CODE chs. 5, 7, and 26 and TEX. HEALTH & SAFETY CODE chs. 361 and 371, assessing a penalty and granting other relief as requested above, together with any other relief the Commission finds appropriate.

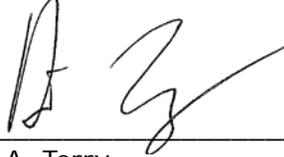
Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Caroline M. Sweeney, Deputy Director
Office of Legal Services

Kathleen C. Decker, Division Director
Litigation Division

by  _____

David A. Terry
State Bar of Texas No. 24079447
TCEQ Office of Legal Services
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)
David.Terry@tceq.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2015, the original of the foregoing "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ted Booher and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services, LLC" ("EDSARP") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing EDSARP was mailed via the methods indicated, to:

The Honorable Travis Vickery
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701-1649
Via Electronic Filing

and

Ted Booher
7815 Highway 225
La Porte, Texas 77571
**Via Certified Mail, Return Receipt Requested Article No. 7004
1350 0002 7546 8059**

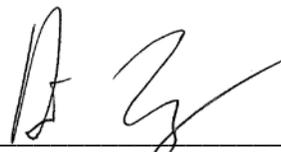
and

Ted Booher, President
Rapid Marine Fuels, LLC
7815 Highway 225
La Porte, Texas 77571
**Via Certified Mail, Return Receipt Requested Article No. 7004
1350 0002 7546 8066**

and

Francis S. Ainsa, Jr., Counsel for Respondents
Ainsa Hutson, LLP
5909 Acacia Circle
El Paso, Texas 79912
Via First Class Mail And Via Electronic Mail (courtesy copy)

I further certify that on this day a true and correct copy of the foregoing EDSARP was electronically delivered to Rudy Calderon, TCEQ Office of Public Interest Counsel, at rudy.calderon@tceq.texas.gov.



David A. Terry, Staff Attorney
Office of Legal Services
Litigation Division
Texas Commission on Environmental Quality

**ATTACHMENT A
PENALTY CALCULATION WORKSHEET**



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	11-Feb-2013	Screening	19-Feb-2013	EPA Due	
	PCW	18-Nov-2014				

RESPONDENT/FACILITY INFORMATION	
Respondent	Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Reg. Ent. Ref. No.	RN101061422
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46265	No. of Violations	2
Docket No.	2013-0374-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media	Used Oil	Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
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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	10.0% Enhancement	Subtotals 2, 3, & 7	\$1,500
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Notes	Enhancement due to unsatisfactory classification.
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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	\$840	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$16,800	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$16,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$16,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$16,500
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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.
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PAYABLE PENALTY	\$16,500
------------------------	----------

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RA

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Danielle Porras

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 0%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement due to unsatisfactory classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 10%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 10%

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRON

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.62 and 40 Code of Federal Regulations § 262.11

Violation Description Failed to conduct hazardous waste determinations for waste at the Facility. Specifically, the Respondent was not conducting hazardous waste determinations for the wastewater generated from the used oil tanker processing unit, sludge or oily solids generated from used oil processing, heavily soaked oily rags, and used oil filters.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (15.0%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 4 Number of violation days 4

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event. Includes 'mark only one with an x' instruction.

Violation Base Penalty \$15,000

Four single events (one event for each waste stream) are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. Columns: Before NOV, NOV to EDPRP/Settlement Offer.

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

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$840

Violation Final Penalty Total \$16,500

This violation Final Assessed Penalty (adjusted for limits) \$16,500

Economic Benefit Worksheet

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Case ID No. 46265
Reg. Ent. Reference No. RN101061422
Media Industrial and Hazardous Waste
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
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)	\$16,800	25-Oct-2012	25-Oct-2013	1.00	\$840	n/a	\$840

Notes for DELAYED costs

Estimated cost to conduct waste determinations and classifications on four waste streams. The Date Required is the investigation date and 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

\$16,800

TOTAL

\$840

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRON

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s) Tex. Water Code §§ 5.702 and 26.0291

Violation Description Failed to pay outstanding general stormwater permit fees for TCEQ Financial Account No. 20038412 for fiscal years 2011 and 2012.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0.0%)

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%)

Matrix Notes No penalty is calculated for this violation.

Adjustment \$25,000

\$0

Violation Events

Number of Violation Events [] Number of violation days []

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event

Violation Base Penalty \$0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table with columns: Extraordinary, Ordinary, N/A, Reduction (Before NOV, NOV to EDPRP/Settlement Offer)

Notes

Violation Subtotal \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0 Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Case ID No. 46265
Reg. Ent. Reference No. RN101061422
Media Industrial and Hazardous Waste
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
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

N/A

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

\$0

TOTAL

\$0

**ATTACHMENT B
PENALTY CALCULATION WORKSHEET**



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	11-Feb-2013	Screening	19-Feb-2013	EPA Due	
	PCW	18-Nov-2014				

RESPONDENT/FACILITY INFORMATION	
Respondent	Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Reg. Ent. Ref. No.	RN101061422
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46265	No. of Violations	1
Docket No.	2013-0374-MLM-E	Order Type	1660
Media Program(s)	Used Oil	Government/Non-Profit	No
Multi-Media	Industrial and Hazardous Waste	Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
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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	10.0% Enhancement	Subtotals 2, 3, & 7	\$25
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Notes	Enhancement due to unsatisfactory classification.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$2,040	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,943	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$275
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OTHER FACTORS AS JUSTICE MAY REQUIRE	741.8%	Adjustment	\$2,040
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance associated with the violation.
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Final Penalty Amount	\$2,315
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,315
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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.
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PAYABLE PENALTY	\$2,315
------------------------	---------

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RA

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Used Oil

Enf. Coordinator Danielle Porras

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 0%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement due to unsatisfactory classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 10%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 10%

Screening Date 19-Feb-2013

Docket No. 2013-0374-MLM-E

PCW

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRON

Policy Revision 3 (September 2011)

Case ID No. 46265

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101061422

Media [Statute] Used Oil

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 328.24(e) and 324.22(c)

Violation Description Failed to provide evidence of financial responsibility with registration to assure the Facility has sufficient assets to provide for proper closure.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0.0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%

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

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1 365 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$250

One annual event is recommended for the 12-month period preceding the October 25, 2012 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,040

Violation Final Penalty Total \$2,315

This violation Final Assessed Penalty (adjusted for limits) \$2,315

Economic Benefit Worksheet

Respondent Ted Booher and Rapid Marine Fuels, LLC d/b/a RAPID ENVIRONMENTAL SERVICES
Case ID No. 46265
Reg. Ent. Reference No. RN101061422
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
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]	\$1,943	25-Oct-2011	25-Oct-2012	1.00	\$97	\$1,943	\$2,040
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the closure of 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 \$1,943

TOTAL \$2,040

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RAPID MARINE FUELS, LLC
7815 HIGHWAY 225
LA PORTE, TX 77571**

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