

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 22, 2015

Tucker Royall, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

**Re: SOAH Docket No. 582-14-2870; TCEQ Docket No. 2013-0374-MLM-E In
Re: Ted Booher and Rapid Marine Fuels, L.L.C. d/b/a Rapid Environmental
Services, L.L.C.**

Dear Mr. Royall:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision on Summary Disposition and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than June 11, 2015. Any replies to exceptions or briefs must be filed in the same manner no later than June 22, 2015.

This matter has been designated **TCEQ Docket No. 2013-0374-MLM-E; SOAH Docket No. 582-14-2870**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Vickery".

Travis Vickery
Administrative Law Judge

TEV/mle
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 322-2061

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: TED BOOHER DBA RAPID ENVIRONMENTAL SERVICES
SOAH DOCKET NUMBER: 582-14-2870
REFERRING AGENCY CASE: 2013-0374-MLM-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE

ALJ TRAVIS VICKERY

REPRESENTATIVE / ADDRESS

PARTIES

FRANCIS S. AINSA, JR.
AINSA HUTSON, LLP
5809 ACACIA CIRCLE
EL PASO, TX 79912
(915) 845-5300 (PH)
(915) 845-7800 (FAX)

RAPID ENVIRONMENTAL SERVICES, L.L.C.

ELI MARTINEZ
PUBLIC INTEREST COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
12100 PARK 35 CIRCLE, MC-103, BUILDING F
AUSTIN, TX 78753
(512) 239-3974 (PH)
(512) 239-6377 (FAX)
eli.martinez@tceq.texas.gov

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

DAVID A. TERRY
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
LITIGATION DIVISION
P.O. BOX 13087, MC 175
AUSTIN, TX 78711-3087
(512) 239-0619 (PH)
(512) 239-3434 (FAX)
David.Terry@tceq.texas.gov

TCEQ EXECUTIVE DIRECTOR

II. PROCEDURAL HISTORY AND JURISDICTION

On September 11, 2013, the ED filed the Executive Director's Preliminary Report and Petition (EDPRP). The ED alleged Respondents violated provisions of the Texas Water Code (Water Code), Texas Health & Safety Code (Health & Safety Code), Code of Federal Regulations (C.F.R.), and the Commission's rules, governing hazardous waste, proof of financial responsibility, payment of permit fees, and reporting and record obligations.³

Respondents filed an Answer to the EDPRP on December 19, 2013, requesting a hearing. The matter was referred to the State Office of Administrative Hearings (SOAH) on March 20, 2014, for the assignment of an ALJ to conduct a hearing and issue a proposal for decision (PFD). A preliminary hearing was set for May 1, 2014, at SOAH.⁴

On April 23, 2014, the ED filed a joint motion to waive the preliminary hearing, admit exhibits for the limited purpose of establishing jurisdiction, and establish a procedural schedule. On April 23, 2014, a SOAH ALJ issued Order No. 1, granting the agreed motion, waiving the preliminary hearing, admitting ED Exhibits A, B, C, and D for jurisdictional purposes, and adopting the agreed procedural schedule. As a result, jurisdiction is undisputed and is therefore addressed only in the Findings of Fact and Conclusions of Law in the ALJ's Proposed Order attached hereto. Consistent with the joint motion, Order No. 1 set a hearing on the merits for September 4, 2014.

Agreed motions for continuance were granted on September 3, 2014, September 30, 2014, and November 20, 2014.⁵

On November 19, 2014, the ED filed his First Amended Report and Petition (EDFARP).

³ ED Ex. A. Admitted in Order No. 1 for the limited purpose of jurisdiction.

⁴ ED Ex. B, C, and D. Admitted in Order No. 1 for the limited purpose of jurisdiction.

⁵ Order Nos. 2, 3, and 4.

On December 17, 2014, the ED filed Proposed Joint Stipulations and Motion for Approval (Stipulations). On January 5, 2015, a SOAH ALJ issued Order No. 5, granting the agreed motion for approval of the Stipulations.

On January 7, 2015, the ED filed a status report indicating the ED and Respondents were continuing to negotiate a resolution of this matter.

On February 27, 2015, the ED filed a status report and a Motion for Summary Disposition (Motion). On the same day, the ED also filed his Second Amended Report and Petition (EDSARP). Respondents filed no response to the Motion.

On April 22, 2015, a SOAH ALJ issued Order No. 6, granting the Motion and requesting proposed findings of fact and conclusions of law, which the ED filed on May 8, 2015.

III. LEGAL GROUNDS FOR SUMMARY DISPOSITION

A motion for summary disposition may be granted if the moving party shows that it is entitled to relief as a matter of law. The Commission's rule on summary disposition is found at 30 Texas Administrative Code § 80.137. The rule provides, in pertinent part, that:

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 hearing, or filed thereafter and before disposition 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.⁶

Under the Texas Administrative Code, the parties to a legal proceeding may agree to stipulate to any factual, legal, or procedural matter and move for the ALJ's approval of the

⁶ 30 Tex. Admin. Code § 80.137(c).

agreed-upon stipulations.⁷ Additionally, parties may make an enforceable agreement affecting any pending matter so long as it is in writing, signed, and filed with SOAH, or entered into the record at hearing.⁸ Stipulations on agreed-upon facts and legal issues in dispute may form the basis of a summary disposition if they 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.⁹

IV. ANALYSIS

A. Stipulations

The ED's Motion is based on the Stipulations filed by the parties on December 17, 2014. The Stipulations were part of a compromise to potentially avoid a hearing on the merits and allow the ED time to review records regarding Respondents' financial ability to pay the administrative penalty. The Stipulations were executed by a staff attorney for the ED and Ted Booher, individually, and on behalf of Rapid Marine Fuels, LLC.¹⁰

The ED attached 13 exhibits to the Motion, including the Stipulations. Because Respondents failed to respond to the Motion, the exhibits are admitted.¹¹ Findings based on the Stipulations and other exhibits are fully set forth in the Findings of Fact and Conclusions of Law in the Proposed Order. The Stipulations establish the following undisputed facts:

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 Health & Safety Code chapters 361 and 371.

⁷ 30 Tex. Admin. Code § 80.127.

⁸ 30 Tex. Admin. Code § 80.125.

⁹ 30 Tex. Admin. Code § 80.137(c).

¹⁰ ED Ex. 5 at 5.

¹¹ Not to be confused with the exhibits offered at the preliminary hearing for purposes of jurisdiction, which the ED labeled Exhibits A, B, C, and D.

2. On October 25, 2012, a TCEQ Houston Regional Office investigator (Investigator) documented that Respondents violated 40 C.F.R. § 262.11 and 30 Texas Administrative Code § 335.62, by failing to conduct hazardous waste determinations for waste at the Facility. Specifically, Respondents were not conducting hazardous waste determinations of 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.
3. On that same date, the Investigator also documented that Respondents violated 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.
4. Respondents did not pay outstanding general stormwater permit fees for TCEQ Financial Account No. 20038412 for fiscal years 2011 and 2012, in violation of Water Code §§ 5.702 and 26.0291.
5. The administrative penalty of \$18,815 is properly calculated in accordance with the TCEQ Penalty Policy (September 1, 2011) and the calculation does not violate that policy.
6. Respondents agree to undertake the corrective actions.¹²
7. Respondents agree their claim of financial inability to pay (FIP) is waived in accordance with 30 Texas Administrative Code § 70.8 by not producing all of the requested financial documents by the agreed-upon deadline, which was extended by the ED from December 17, 2014, to January 9, 2015.¹³

Based on the Stipulations, there is no genuine issue of material fact regarding Respondents' violations, and the ED is entitled to judgment as a matter of law, as detailed below.

¹² ED Ex. 5 at 2-4.

¹³ ED Ex. 1 at 1.

B. Respondents failed to conduct hazardous waste determinations at the Facility

Federal and state regulations require that a person who generates solid waste must determine if the waste is hazardous.¹⁴ Based on the Stipulations,¹⁵ there is no genuine issue of material fact regarding the following violations documented by the Investigator during the October 25, 2012 investigation:

- The used oil processing method employed by Respondents generated wastewater and sludge streams;¹⁶
- Respondents generated heavily soaked, oily rags, and used oil filters at the Facility; and¹⁷
- Respondents were unable to provide sufficient documentation or information to support that a hazardous waste determination had been conducted on the wastes generated on-site.¹⁸

The ED is entitled to judgment as a matter of law that Respondents violated 40 C.F.R. § 262.11 and 30 Texas Administrative Code § 335.62.

¹⁴ 40 C.F.R. § 262.11 and 30 Tex. Admin. Code § 335.62. A person who generates solid waste must determine if it is hazardous using the following method:

(1) Determine if the material is excluded or exempted from being a solid waste or hazardous waste per 30 Texas Administrative Code § 335.1, identified in 40 C.F.R. Part 261, Subpart A, or identified in 40 C.F.R. Part 261, Subpart E.

(2) If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 C.F.R. Part 261, Subpart D.

(3) If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 C.F.R. Part 261, Subpart C. *See* 30 Tex. Admin. Code § 335.504.

¹⁵ ED Ex. 5; ED Ex. 6 at 1.

¹⁶ ED Ex. 11 at 6. As a used oil processor, the Respondents' Facility receives used oils from various customers to process the fuel into a marketable fuel such as bunker fuel, supplementary cement kiln fuel, or asphalt plant fuel. The Facility conducts an oil-water-solid processing method by using an emulsion breaking chemical and settling process to remove water and solids from the used oil.

¹⁷ ED Ex. 11 at 6-7, 12.

¹⁸ ED Ex. 11 at 12.

C. Respondents failed to provide evidence of financial responsibility with registration to assure that the Facility had sufficient assets to provide for proper closure

Under state regulations, a used oil handler or processor is required to provide proof of financial assurance that the facility has sufficient assets to provide for proper closure.¹⁹ A used oil handler or processor must update its financial assurance annually to cover any appropriate adjustments, such as inflation, and provide coverage for the entire active area of the facility, which includes any area where transportation, storage, or processing of used oil occurs.²⁰

At the time of the investigation, Respondents had financial assurance for an active area of the Facility for 9,480 square feet; however, Respondents estimated that the Facility's active area is approximately a little over two acres.²¹ The ED represents that two acres is a little over 87,120 square feet. Therefore, the financial assurance for the Facility covering less than 10,000 square feet is insufficient.²²

Based on the Stipulations,²³ there is no genuine issue of material fact regarding Respondents' failure to provide financial responsibility with their registration to assure the Facility has sufficient assets to provide for proper closure. The ED is entitled to a judgment as a matter of law that Respondents violated 30 Texas Administrative Code §§ 324.22(c) and 328.24(e).

¹⁹ 30 Tex. Admin. Code § 328.24(e).

²⁰ 30 Tex. Admin. Code § 324.22(c).

²¹ ED Ex. 11 at 8-9.

²² 30 Texas Administrative Code § 324.22(c) requires a facility of over 10,000 square feet to have financial assurance in the amount of \$4,100 per each 10,000 square feet increment of the facility. For instance, an 80,000 square foot facility would need financial assurance in the amount of \$32,800.

²³ ED Ex. 5 at 2; ED Ex. 6 at 1.

D. Respondents failed to pay outstanding general stormwater fees for fiscal years 2011 and 2012

The Water Code imposes an annual water quality fee on each wastewater discharge permit holder, which must be paid by the permit holder on the date the fee is due.²⁴ Respondents hold a general stormwater permit for the Facility associated with TCEQ Financial Account No. 20038412 (Account). During a record review conducted on March 7, 2013, a TCEQ employee documented that Respondents failed to pay outstanding general stormwater permit fees for the Account for fiscal years 2011 and 2012.²⁵

Based on the Stipulations,²⁶ there is no genuine issue of material fact regarding Respondents' failure to pay outstanding general stormwater permit fees for the Account for fiscal years 2011 and 2012. The ED is entitled to a judgment as a matter of law that Respondents violated Water Code §§ 5.702 and 26.0291.

E. The penalty of \$18,815 is reasonable and justified

Water Code § 7.053 requires the ED to consider certain factors when calculating an administrative penalty. Based on the Stipulations, there is no genuine issue of material fact regarding the calculation and assessment of the penalty.²⁷ Respondents stipulated that the ED properly considered the statutory factors outlined in Water Code § 7.053 in calculating the penalty. Respondents also stipulated that the penalty was calculated in accordance with the Commission's Penalty Policy in effect at the time of the violations. The ED is entitled to judgment as a matter of law that the penalty amount of \$18,815 is properly calculated, reasonable, and justified.²⁸

²⁴ Tex. Water Code §§ 5.702, 26.0291.

²⁵ ED Ex. 13 at 1-2.

²⁶ ED Ex. 5 at 2; ED Ex. 6 at 1.

²⁷ ED Ex. 5 at 2-3.

²⁸ ED Ex. 5 at 2-3.

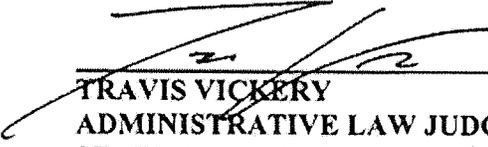
F. The corrective actions set out in the ordering provisions are necessary, justified, and appropriate

The Commission is authorized to order a person who violates a statute or rule within the Commission's jurisdiction to take corrective action.²⁹ Based on the Stipulations, the corrective actions in paragraph 10 of the Stipulations are necessary, and Respondents have agreed to undertake them.³⁰ There is no genuine issue of material fact that the stipulated corrective actions are necessary and appropriate.³¹ The ED is entitled to judgment as a matter of law that the corrective actions are necessary and appropriate.

V. CONCLUSION

The ALJ recommends that the Commission find that the violations occurred, assess an administrative penalty of \$18,815, and order the corrective actions recommended by the ED.

SIGNED May 22, 2015.



TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

²⁹ Tex. Water Code § 7.073.

³⁰ ED Ex. 5 at 3-4.

³¹ ED Ex. 6 at 1.

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 days after the effective date of the 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 "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. Within 30 days after the effective date of the 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
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. 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. 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. 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. 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. 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. The Commission's Chief Clerk shall forward a copy of this Commission Order to Respondents.
8. 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