

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

IN THE MATTER OF:

**Oil Energy System, Inc.**  
PO Box 711  
Mayagüez, PR 00681

**RESPONDENT**

Proceeding under Section 3008 of the Solid  
Waste Disposal Act, as amended,  
42 U.S.C. § 6928

COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY FOR  
HEARING

Docket No. RCRA-02-2011-7107

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
2011 AUG 15 P 12:32  
OFFICE OF HEARING  
OFFICER

**I. INTRODUCTION**

1. This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6901, et seq. (together hereafter the “Act” or “RCRA”), for injunctive relief and the assessment of civil penalties.
2. This “Complaint, Compliance Order and Notice of Opportunity for Hearing” (“Complaint”) serves notice of the United States Environmental Protection Agency’s (“EPA”) preliminary determination that Oil Energy System, Inc. has violated provisions of RCRA and federal regulations concerning the management of hazardous waste at its facility in Mayagüez, Puerto Rico (the “Facility”).
3. Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), whereby the Administrator of EPA may, if certain criteria are met, authorize a state to operate a “hazardous waste program” (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program. The Commonwealth of Puerto Rico is a “State” as that term is defined by Section 1004(31) of the Act, 42 U.S.C. § 6903(31), and therefore within the meaning of this provision. The Commonwealth of Puerto Rico, however, is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for the implementation and enforcement of RCRA’s hazardous waste regulations in the Commonwealth of Puerto Rico. These regulations are set forth in 40 C.F.R. Parts 260 through 273.
4. The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

## II. JURISDICTION AND GENERAL PROVISIONS

5. This administrative Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).
6. EPA has given notice of this action to the Commonwealth of Puerto Rico.
7. Respondent is Oil Energy Systems, Inc. (hereinafter "Respondent"). Respondent is a corporation duly authorized to conduct business in the Commonwealth of Puerto Rico.
8. Respondent conducts its business operations from its Facility located at Calle Concordia 256, in Mayaguez, Puerto Rico.
9. Respondent is a materials recovery and recycling business. As part of its activities Respondent transports used oil. Respondent stores the used oil in its Facility in approximately five (5) above ground storage tanks.
10. The used oil is placed in the tanks to allow water to separate from the used oil. The resulting water is then directed to the Facility's wastewater treatment system. After treated on site, the wash water is discharged into the Puerto Rico Aqueduct and Sewer Authority's ("PRASA") sewer system. Respondent is authorized to conduct such discharges through a PRASA pretreatment permit.
11. To the best of EPA's knowledge, at times Respondent places the used oil in a 2000-gallon tank and heats the oil to accelerate the process.

## III. DEFINITIONS AND STATUTORY PROVISIONS

12. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 et seq. The Administrator of EPA, pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), promulgated regulations for the management of hazardous waste and setting standards for generators and treatment, storage and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 266 and Parts 268, 270 and 273. Regulations for management of used oil are set forth in 40 C.F.R. Part 279.
13. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA.
14. Respondent is a "person" (as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
15. Respondent's Facility constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.
16. Respondent has been and continues to be the "operator" of the Facility as that term is defined in 40 C.F.R. § 260.10.

17. On or about February 13, 1998, Respondent notified EPA that it is a hazardous waste transporter. This notification was made pursuant to Section 3010 of RCRA. EPA issued Respondent with EPA Identification Number PRR000008524 for its Facility.
18. Respondent operates as a “used oil transporter,” as that term is defined in 40 C.F.R. § 279.1. Used oil processing is defined in 40 C.F.R. § 279.1 as “chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.”

#### **IV. FINDINGS**

19. On or about February 2, 2010, duly designated representatives of EPA conducted an inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations (“the first inspection”).
20. On or about March 2, 2011, duly designated representatives of EPA conducted a second inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine if Respondent continued to be in non-compliance with Subtitle C of RCRA and its implementing regulations “the second inspection”).
21. At the end of the first inspection EPA representatives held a closing conference with Respondent’s representatives. During the closing conference, EPA discussed the preliminary findings of the compliance evaluation inspection. EPA informed Respondent, among other things, that:
  - a. Heating of the used oil is considered used oil processing,
  - b. Facilities that conduct used oil processing need to comply with requirements established in 40 C.F.R. § 279 Subpart F and
  - c. Respondent was processing used oil and was not complying with the requirements in 40 C.F.R. § 279 Subpart F.
22. During EPA’s second inspection, Respondent’s representatives present at the Facility were not cooperative with EPA’s representatives. EPA’s representatives requested the documentation required in 40 C.F.R § 279 Subpart F (a copy 40 C.F.R § 279 was handed to Respondent’s representatives). Respondent’s representatives failed to produce the required documentation. . EPA representatives gave Respondent thirty (30) days from the date of the second inspection (March 2, 2011) to submit to EPA the required documents under 40 C.F.R § 279 Subpart F. The request was made under Section 3007 of RCRA. Respondent’s representatives were informed that if the information was not received during the 30 day period, Respondent could face penalties of up to \$37,500.00. EPA representatives requested permission to enter the Facility’s where operations were conducted, but Respondent’s representatives denied access.

23. As of at least April 2, 2011, and up to the date of issuance of this Complaint, respondent has not submitted the requested documentation.

## **COUNT**

### **Failure To Comply With Regulations For Used Oil Processors**

24. Complainant re-alleges each applicable allegation contained in paragraphs “7” through “24”, as if fully set forth herein.
25. As set forth in 40 C.F.R. § 279.50(a), Subpart F requirements “apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.”
26. The requirements of Subpart F do not apply to “Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in §279.41”. 40 C.F.R. § 279.50(a)(1).
27. As part of its operations at the facility, Respondent at times places the used oil in a 2000-gallon tank and heats the oil to accelerate the water separation process.
28. Heating of the used oil is not incidental to the storage of the used oil.
29. Heating the used oil is considered as processing the used oil, since a physical separation is involved.
30. The regulations in 40 C.F.R. § 279.50(a)(1), provide an exemption to the requirement. However, Respondent is not covered by the exemption because the processing, heating the used oil, is not incidental to the aggregation. Respondent is required to comply with 40 C.F.R. § 279 Subpart F.
31. At the time of the inspections, Respondent should have submitted or have available for review the following documents:
- a. Documentation that supports the fact that Respondent made arrangements to familiarize police, fire departments, and emergency response teams with the layout of the Facility, properties of used oil handled at the Facility and associated hazards, places where Facility personnel would normally be working, entrances to roads inside the Facility, and possible evacuation routes. 40 C.F.R. § 279.52(a)(6)(i)(A).
  - b. Documentation that supports the fact Respondent made arrangements to familiarize local hospitals with the properties of used oil handled at the Facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the Facility. 40 C.F.R. § 279.52(a)(6)(i)(D).
  - c. A Facility contingency plan. 40 C.F.R. § 279.52(b).

- d. A Facility analysis plan. 40 C.F.R. § 279.55.
  - e. A written operating record of the Facility. 40 C.F.R. § 279.57(a).
  - f. Copies of Biennial reports submitted to EPA. 40 C.F.R. § 279.57(b).
32. The Facility was in violation of RCRA and its regulations at 40 C.F.R. § 279, Subpart F for its failure to comply with the above requirements.

## V. PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

Count: \$48,188.00

Total Proposed Penalty for Count is **\$48,188.00**.

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to “take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.” To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA’s 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address:

<http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>

This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. These adjustments were made pursuant to the December 29, 2008 document entitled Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009); and the November 16, 2009 document entitled Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule.

The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after January 12, 2009 is \$37,500 per day of violation. See Paragraph 8 supra, and 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for the violation cited in this Complaint is included in Attachment I,

below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

## **VI. COMPLIANCE ORDER**

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to the Respondent, which shall take effect (i.e., the effective date) thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

- 1) Within thirty (30) calendar days of the effective date of this Compliance Order, to the extent it has not already done so, Respondent shall:
  - a) Comply with 40 C.F.R. Subpart F requirements; or,
  - b) Stop processing used oil.
- 2) Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall comply with all other applicable federal and state regulatory requirements for hazardous waste generators for its Facility.
- 3) Respondent shall submit to EPA within forty (40) calendar days of the effective date of this Compliance Order written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements cited in Paragraphs “1” through “2” of this Compliance Order, above. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.
- 4) All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Jesse Avilés  
U.S. Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Division  
Response & Remediation Branch  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907-4127

- 5) This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).
- 6) Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or local) provisions, nor does such compliance release Respondent from liability for any violations at the Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA’s right to enforce any applicable provision of law, and to seek and

obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Facility.

## **VII. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to \$37,500.00 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA.

## **VIII. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," (CROP) and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

### **Answering the Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint (40 C.F.R. §§ 22.15(a) and 22.7(c)). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor - Room 1631,  
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and the Assistant Regional Counsel mentioned in Section VI below and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer(s) facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

### **Opportunity to Request a Hearing**

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

### **Failure To Answer**

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion (40 C.F.R. § 22.17(a)). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations (40 C.F.R. § 22.17(a)). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d).

### **Exhaustion of Administrative Remedies**

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served upon the parties." 40 C.F.R. § 22.30(a). Pursuant to



40 C.F.R. § 22.7(c), where service is effected by mail, “five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.” Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

## **IX. INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant’s calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent’s ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Lourdes del Carmen Rodríguez, Esq.  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907  
Telephone: (787) 977-5819

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent’s requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent’s obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent

agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

#### **X. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified in Section IX.

#### **XI. FILING OF DOCUMENTS**

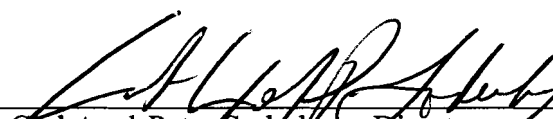
The Answer and any Hearing Request and all subsequent documents filed in this action shall be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor - Room 1631,  
New York, New York 10007-1866

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Lourdes del Carmen Rodríguez  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, PR 00907  
Telephone: (787) 977-5819  
Facsimile: (787) 729-7748

COMPLAINANT:

  
\_\_\_\_\_  
Carl Axel-Peter Soderberg, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2

Date: \_\_\_\_\_

08-11-11

To: José González Amador  
President  
Oil Energy System, Inc.  
256 Calle Concordia  
Petrowest Plaza 2ndo Piso  
Mayaguez, PR 00680

cc: Ms. María V. Rodríguez, Director  
Land Pollution Regulation Program  
Puerto Rico Environmental Quality Board  
P.O. Box 11488  
Santurce, PR 00910

**ATTACHMENT I**  
**NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT**  
**Penalty Computation Worksheet**  
**Count**

Respondent:  
 Oil Energy System, Inc.

Facility Address:  
 Box 1256  
 Mayagüez, PR 00680

Requirement Violated:  
**40 C.F.R § 279 Subpart F**  
*Standards for Used Oil Processors and Re-Refiners*

**PENALTY AMOUNT FOR COMPLAINT**

1	Gravity based penalty from matrix		\$ 37,500.00
	a) Potential for harm		Major
	b) Extent of deviation		Major
2	Select an amount from the appropriate multi-day matrix		\$ -
3	Multiply line 2 by number of waste streams minus 1	_____	\$ -
4	Add line 1 and line 3		\$ 37,500.00
5	Percent increase/decrease for good faith	_____ 0%	\$ -
6	Percent increase/decrease for willfulness/negligence	_____ 0%	\$ -
7	Percent increase for history of non-compliance	_____ 0%	\$ -
8	Calculate economic benefit		\$ 10,688.00
9	Add lines 4, 5, 6, 7 and 8 for penalty amount to be inserted in the complaint		\$ 48,188.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet  
COUNT 1

**1. Gravity Based Penalty**

- a. Potential for Harm – The potential for harm for failure to comply with the Standards for Used Oil Processors and Re-Refiners is deemed MAJOR. The RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: 1) the adverse impact of the noncompliance on the regulatory scheme; and 2) the risk of human or environmental exposure. The RCRA regulatory program is undermined when the Respondent decided not to comply with the applicable regulations. The Facility was inspected in February 2010. At the time, Respondent's representatives were informed that the heating of the used oil was considered used oil processing and that it needed to comply with the requirements for used oil processors. A year later, on March 2011, another inspection was made of the facility and EPA observed that Respondent had not complied with any of the requirements for used oil processors. Respondent's unwillingness to comply shows a disregard for the regulations and its role to protect human health and the environment.
- b. Extent of Deviation – The extent of deviation present in this violation was determined to be MAJOR. At the time of the March 2011 inspection Respondent's Facility did not was not in compliance with any part of the regulations for used oil processors.

The applicable cell ranges from \$37,500 to \$28,330. The high point (\$37,500) for the cell matrix was selected.

- c. Multiple/Multi-day – No multi-day was applied.

**2. Adjustment Factors**

- a. Good Faith – No adjustment was applied.
- b. Willfulness/Negligence – No adjustment was applied.
- c. History of Compliance – No adjustment was applied.
- d. Ability to Pay – No adjustment was applied.
- e. Environmental Project – No adjustment was applied.
- f. Other Unique Factors – No adjustment was applied.

**3. Economic Benefit**

After running the BEN model, the economic benefit for not complying with the above mentioned requirement is \$10,688.

## ATTACHMENT II

### PENALTY ASSESSMENT GRAVITY MATRIX

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
	Minor	\$4,250 to \$2,130	\$2,130 to \$710	\$710 to \$150

### MULTI-DAY MATRIX

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm	Major	\$7,090 to \$1,420	\$5,670 to \$1,070	\$4,250 to \$780
	Moderate	\$3,120 to \$570	\$2,230 to \$360	\$1,420 to \$220
	Minor	\$850 to \$150	\$430 to \$150	\$150

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

IN THE MATTER OF  
**Oil Energy System, Inc.**  
PO Box 711  
Mayagüez, PR 00681

**RESPONDENT**

Proceeding under Section 3008 of the Solid  
Waste Disposal Act, as amended,  
42 U.S.C. § 6928

COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY FOR  
HEARING

Docket No. RCRA-02-2011-7107

**CERTIFICATE OF SERVICE**

This is to certify that on this date, I caused to be mailed a true and correct copy of the foregoing "Complaint, Compliance Order and Notice of Opportunity for Hearing," bearing Docket Number RCRA-02-2011-7107, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, by:

Certified Mail/Return Receipt Requested, to:

Mr. José González Amador  
President  
Oil Energy System, Inc.  
256 Calle Concordia  
Petrowest Plaza 2ndo Piso  
Mayaguez, PR 00680

The Original and a copy for filing by Overnight Mail to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor,  
New York, New York 10007-1866.

Dated:

August 11, 2011

  
San Juan, Puerto Rico