



Legal and Regulatory Issues in biodiesel and vegetable oil



Jason Burroughs

Legal Issues

Business Structure (State and Federal)

IRS

EPA

State Comptroller (road tax)

Zoning / Occupancy Permit / Fire / Water / Air

SPCC

Fuel Quality and product liability

Car Dealerships

Competitors



About Us

- Collecting oil and distributing biodiesel
- Open to the public one night a week – “Open House”
- Started as coop, became LLC in 2006 - the day after first Collective Biodiesel Conference
- Licensed to collect and haul oil by state
- Licensed to haul petroleum



Business Structure

IRS recognizes Sole Proprietorship, Partnership, or Corporation (LLC is not a federal entity)

States recognize LLC as a Limited Liability COMPANY

Partnership requires detailed agreement about split of profit, loss, assets, etc.

Find an attorney and accountant before getting serious

Verify if accounts are in personal name or business

Register name with state entity

Get EIN from IRS

Find out SIC and NAICS codes

Get Dun and Bradstreet number

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Business Basics

Hammer out ownership docs, including exit strategy, owner draws (“salary” that comes from owner equity), and scenarios

Discuss salary requirements, risk tolerance, personal ethics, and general expectations

Set a timeframe and a debt level beyond which you will re-evaluate the direction of the business

Schedule regular business meetings to track the progress, discuss financial status, and keep focused



Contracts

- Partnership, LLC, or Corporation agreement
 - Service Agreement with Oil Sources
- Non-compete agreement for employees and key partners
 - Non-disclosure agreement for partners
 - Employment agreement, non-compete, and non-disclosure for employees (and for contracted workers like sales people, welders, etc)
- Agreement with customers who don't pay in advance
- Agreement with customers who use company property (tanks, pumps, etc)

Insurance and Bonds

General Liability policy hard to get for biofuels
Insurance companies often don't know how to classify us
Shop around for an insurance *broker* who will shop you
around to insurance companies

We pay \$4000 per year for \$2 million GL policy

Can be based on your revenue (retroactive increases!)

Policies are VERY specific, read the fine print and ask for
scenarios

State bond may be required to haul petroleum



IRS basics

The IRS uses a variety of documents, including “publications, instructions, and forms”

Publications describe in somewhat layman’s terms the rules and regulations about a particular tax issue

Forms are what are actually filed with the IRS

Instructions give a line by line set of instructions to complete the form

It is advised to read the publication, then the instructions, then fill out the form

Always keep a copy of anything you mail to the IRS, and write the date you mailed it

In the future, excise taxes will be filed electronically



IRS rules for biodiesel

Fuel used “on road” is subject to federal excise taxes, which are described in detail in IRS Pub 510.

Biodiesel distributors who want to blend and get credit must register on Form 637 for Activity Letter M (for mix)

Once Form 637 registration is approved, form 720 must be filed quarterly to pay road tax (24.4 cents) and receive blender’s credit (\$1 for virgin vegetable oil and for animal fat, 50 cents for used cooking oil)

Form 8849 can be filed within the quarter for “faster” payment



IRS rules for vegetable oil

Vegetable Oil sellers must register on Form 637 for Activity Letter AL to get 50 cent rebate on “Liquid Fuels Derived from Biomass” (without AL registration, you can still wipe out your road taxes, even as an individual)

Once Form 637 registration is approved, form 720 must be filed quarterly to pay road tax and receive blender’s credit

Form 8849 can be filed within the quarter for “faster” payment



IRS rules for employers

Each new employee should fill out W-4 for exemptions and I-9 for employment eligibility

Payroll taxes are due to IRS quarterly

ADP or other payroll services cost about \$75 per payroll period, up to 5 employees



Renewable Fuel Standard (EPA)

In 2007, Congress passed the Renewable Fuel Standard (RFS) that allowed biodieselers to take a credit (RIN) for each gallon

Rationale is that all fuel providers should be making 7% renewables (goes up each year)

1.5 RINs per gallon (1.0 for corn ethanol)

Must file quarterly and/or annually with EPA electronically

RINs have a street value of 5 cents each, but could possibly be worth much more

Compliance period is Jan – Dec, but you have until end of Feb of next year to buy needed credits



Spill Prevention Plan (EPA)

EPA requires any facility with more than 1300 gallons of *capacity* to store liquid storage to file a formal Spill Prevention Countermeasures Control Plan (SPCC)

SPCC must be signed off on by an environmental engineer, typically cost \$2000 - \$5000



State Rules

Consult your local State Comptroller and/or Secretary of State to find out local requirements.

Get Sales Tax Permit.

Contact state environmental regulatory agency about air/water/pollution issues related to your business.

Be prepared to file state income tax if required.

Be prepared to file franchise taxes if required.

Don't forget that equipment purchased used or online must have "use tax" paid on it.



More State Rules

Contact state department of agriculture and find out rules and incentives for biofuel production or sales

Contact state Dept. of Transportation to find out rules about hauling or selling fuel

Contact state Dept. of Health to learn about rules for hauling and/or processing vegetable oil

Register with the state employment agency as an employer (may reduce future payments)



Local Rules

Go to the zoning board and find out if the facility you are interested in is zoned for what you want to do there.

Obtain an Occupancy Permit if required.

Introduce yourself to your potential new neighbors.

Have the facility inspected by the fire marshal (note: there is also a county fire marshal that may also be helpful).

Check with your local municipality to see if there are any other restrictions.

Find out the number of your city's spill response team and put the number on speed dial on everyone's phone.



Fuel Quality and Product Liability

Establish a fuel quality program in writing. Take a sample of every batch produced or bought or delivered in bulk.
Label samples.

Listen to your gut. If it smells like cotton candy, burns your nostrils, or knocks you out, it might be bad fuel!

Basic tests: 27/3, phlip, shake 'em up water test, clear and bright (four 20mL plastic vials per sample)

Take ownership of problems. Hold suppliers accountable. Communicate regularly with customer until issue resolved.



Mechanics and Car Dealers

Accept the fact that most mechanics don't like biodiesel and most dealerships will be unfriendly.

Don't be a biodiesel snob, educate them like you do your friends and family.

If the dealer says a customer needs to have their fuel system flushed or replaced, go down in person. Get the customer's permission to speak on their behalf.

Invite dealer mechanics to your open house or customer appreciation night.

Find your own diesel mechanic to refer customers to.



Fair and Unfair Competition

First rule: DON'T STEAL OIL!

Second rule: If it has someone else's name on it, and you take it, YOU ARE STEALING OIL!

Get agreements in writing. If not possible, write letter and send certified return receipt requested, saying that if they disagree, they need to reply. Otherwise, the agreement is in effect.

Recognize that some oil contracts are exclusive, and that by putting a container out next to someone else's, you could be accused of "tortuous interference" by tempting them to put oil in your container.



What if you are accused of stealing

Get an attorney immediately. Jon Jaworski in Houston is the nation's leading grease lawyer.

Don't say anything to the police. Your explanation of why you thought it was ok could be all they need to have you **ARRESTED.**

If the competitor calls you directly, fight the urge to tell them about how honest you are, etc. Refer them directly to your attorney.

Expect to spend \$1000 - \$5000 on a retainer to defend yourself, even if it is just to make a phone call or write a letter. Plan for this expense now.



Discussion and Questions

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512.247.FUEL

5217 CESAR CHAVEZ ST.

AUSTIN, TX 78702

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