

Page 1 of 3

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-1861-MSW-E **TCEQ ID:** RN105008437 **CASE NO.:** 38713
RESPONDENT NAME: Biomedical Waste Solutions, LLC

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Biomedical Waste Solutions, 9665 Jade Avenue, Port Arthur, Jefferson County</p> <p>TYPE OF OPERATION: Medical waste collection and transporter business</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 15, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Tate Barrett, Enforcement Division, Enforcement Team 7, MC R-12, (713) 422-8968; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Wes Sonnier, President, Biomedical Waste Solutions, LLC, P.O. Box 398, Nederland, Texas 77627 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 25 - September 14, 2009</p> <p>Date of NOV/NOE Relating to this Case: November 5, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failed to provide the generator with a properly completed document for shipments of waste collected. Specifically, the manifests for 2009 did not contain the collection date of the waste or the weight of the containers [30 TEX. ADMIN. CODE § 330.1211(g)].</p> <p>2) Failed to record the name and signature of the representative receiving the waste on the waste shipping documents. Specifically, the shipping documents did not contain the printed and signed name of the receiving representative [30 TEX. ADMIN. CODE § 330.1211(h)(7)].</p> <p>3) Failed to carry spill cleanup equipment in transport vehicles. Specifically, vehicle no. 44WKV7 did not have spill cleanup equipment [30 TEX. ADMIN. CODE § 330.1211(c)(1)(C)].</p> <p>4) Failed to comply with cargo compartment requirements. Specifically, vehicle nos. 44WKV7 and 69DGJ3 contained exposed wood floors and sides which is not impervious, nonporous material, vehicle no. 44WKV7 did not have plugs for the discharge openings, and the vehicles did not contain refrigeration units to maintain medical waste at the required temperature [30 TEX. ADMIN. CODE § 330.1211(c)(2)].</p> <p>5) Failed to complete registration</p>	<p>Total Assessed: \$48,496</p> <p>Total Deferred: \$9,699 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$1,172 (remaining \$37,625 due in 35 monthly payments of \$1,075 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility by September 14, 2009:</p> <p>a. Updated manifesting procedures to ensure they are properly completed to include the collection dates, weights of the containers, and the required printed names and signatures of waste generators and waste primary transporter;</p> <p>b. Obtained a spill kit in vehicle no. 44WKV7;</p> <p>c. Applied the required identification on the two sides and back of the cargo-carrying compartment of vehicle no. 44WKV7;</p> <p>d. Coated the floor and sides of the cargo compartment of vehicle nos. 44WKV7 and 69DGJ3 with an impervious, nonporous material;</p> <p>e. Filled all discharge openings in vehicle no. 44WKV7 securely closed using silicone sealant;</p> <p>f. Submitted an updated transporter of medical waste registration providing a correct description of each transportation unit, including licence plate (tag) number, including state and year; and</p> <p>g. Ceased delivering medical waste to an unauthorized facility March 12, 2009.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, purchase refrigerated vehicles to transport all untreated medical waste that will be held longer than 72 hours or create written procedures to prevent holding unrefrigerated medical waste longer than 72 hours; and</p>

<p>forms provided by the Commission and provide a description of each transportation unit, including license plate (tag) number, including state and year, at least 60 days prior to commencing operations. Specifically, the Respondent was utilizing vehicle no. 44WKV7, however, vehicle no. 09ZCF5 was listed on the registration [30 TEX. ADMIN. CODE § 330.9(l)(1)(C)(iii)].</p> <p>6) Failed to maintain a copy of the registration form at the designated place of business and with each transportation unit used to transport untreated medical waste [30 TEX. ADMIN. CODE § 330.9(l)(4)].</p> <p>7) Failed to deposit untreated medical waste at an authorized facility. Specifically, the Respondent deposited untreated medical waste at a facility not authorized by the Commission from October 6, 2008 through March 12, 2009 [30 TEX. ADMIN. CODE § 330.1211(j)].</p> <p>8) Failed to have transport vehicles with the name of the transporter on the two sides and back of the cargo-carrying compartment in letters at least three inches high. Specifically, vehicle no. 44WKV7 did not have the company name on both sides and rear of the vehicle [30 TEX. ADMIN. CODE § 330.1211(c)(1)(D)].</p>		<p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>
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Additional ID No(s): TCEQ Medical Waste Transporter # 50100



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	9-Nov-2009	Screening	13-Nov-2009	EPA Due	
	PCW	9-Aug-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Biomedical Waste Solutions, LLC
Reg. Ent. Ref. No.	RN105008437
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38713	No. of Violations	5
Docket No.	2009-1861-MSW-E	Order Type	1660
Media Program(s)	Medical Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Tate Barrett
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **Subtotals 2, 3, & 7**

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit **Subtotal 6**

Total EB Amounts	\$27,521	*Cepped at the Total EB \$ Amount
Approx. Cost of Compliance	\$84,831	

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the Indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date: 13-Nov-2009

Docket No. 2009-1861-MSW-E

PCW

Respondent: Biomedical Waste Solutions, LLC

Policy Revision 2 (September 2002)

Case ID No. 38713

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105008437

Media [Statute]: Medical Waste

Enf. Coordinator: Tate Barrett

Compliance History Worksheet

>> Compliance History: Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 13-Nov-2009

Docket No: 2009-1861-MSW-E

PCW

Respondent Biomedical Waste Solutions, LLC

Policy Revision 2 (September 2002)

Case ID No. 38713

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105008437

Media [Statute] Medical Waste

Enf. Coordinator Tate Barrett

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 330.121(g) and (h)(7)

Violation Description

Failed to provide the generator with a properly completed document for shipments of waste collected. Specifically, the manifests for 2009 did not contain the collection date of the waste or the weight of the containers. Failed to record the name and signature of the representative receiving the waste on the waste shipping documents. Specifically, the shipping documents did not contain the printed and signed name of the receiving representative.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

20 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One monthly event is recommended from August 25, 2009 investigation date to the September 14, 2009 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes

The Respondent came into compliance on September 14, 2009, prior to the NOE dated November 5, 2009.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,621

This violation Final Assessed Penalty (adjusted for limits) \$1,621

Economic Benefit Worksheet

Respondent: Biomedical Waste Solutions, LLC
Case ID No.: 38713
Reg. Ent. Reference No.: RN105008437
Media: Medical 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
<i>No commas or \$</i>							

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)	\$500	25-Aug-2009	14-Sep-2009	0.05	\$1	n/a	\$1

Notes for DELAYED costs

Estimated delayed cost to implement procedures to ensure manifests are properly completed as required. The Date Required is the date of the investigation and the Final Date is the 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

\$500

TOTAL

\$1

Screening Date: 13-Nov-2009

Docket No.: 2009-1861-MSW-E

PCW

Respondent: Biomedical Waste Solutions, LLC

Policy Revision 2 (September 2002)

Case ID No.: 38713

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN105008437

Media [Statute]: Medical Waste

Enf. Coordinator: Tate Barrett

Violation Number: 2

Rule Cite(s)

30 Tex. Admin Code § 330.1211(c)(1)(C), (c)(2)

Violation Description

Failed to carry spill cleanup equipment in transport vehicles. Specifically, vehicle no. 44WKV7 did not have spill cleanup equipment. Failed to comply with cargo compartment requirements. Specifically, vehicle nos. 44WKV7 and 69DGJ3 contained exposed wood floors and sides which is not impervious, nonporous material, vehicle no. 44WKV7 did not have plugs for the drain openings, and the vehicles did not contain refrigeration units to maintain medical waste at the required temperature.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				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: \$7,500

\$2,500

Violation Events

Number of Violation Events: 4 Number of violation days: 103

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty: \$10,000

Four monthly events are recommended from August 25, 2009 investigation date to the November 13, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to ED/PRP/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: \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$3,924

Violation Final Penalty Total: \$19,324

This violation Final Assessed Penalty (adjusted for limits): \$19,324

Economic Benefit Worksheet

Respondent: Biomedical Waste Solutions, LLC

Case ID No.: 38713

Reg. Ent. Reference No.: RN105008437

Media: Medical 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	\$62,000	14-Sep-2009	10-Aug-2010	0.90	\$187	\$3,737	\$3,924
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$20	13-Sep-2009	14-Sep-2009	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)	\$145	13-Sep-2009	14-Sep-2009	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to provide a spill kit (\$20), seal the cargo compartment of two vehicles (\$140), securely close the discharge openings of the cargo compartment (\$5). The date required is one day prior to the date of the investigation and the final date is the date of compliance. Estimated cost to purchase four refrigerated trucks for transporting waste (\$62,000). 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

\$62,165

TOTAL

\$3,924

Screening Date 13-Nov-2009

Docket No. 2009-1861-MSW-E

PCW

Respondent: Biomedical Waste Solutions, LLC

Policy Revision 2 (September 2002)

Case ID No. 38713

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105008437

Media [Statute] Medical Waste

Enf. Coordinator Tate Barrett

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 330.9(l)(1)(C)(iii) and (l)(4)

Violation Description

Failed to complete registration forms provided by the Commission and provide a description of each transportation unit, including licence plate (tag) number, including state and year, at least 60 days prior to commencing operations. Specifically, the Respondent was utilizing vehicle no. 44WKV7; however, vehicle no. 09ZCF5 was listed on the registration. Also, failed to maintain a copy of the registration form at the designated place of business and with each transportation unit used to transport untreated medical waste.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

20 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes

The Respondent came into compliance September 14, 2009, prior to the NOE dated November 5, 2009.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,621

This violation Final Assessed Penalty (adjusted for limits) \$1,621

Economic Benefit Worksheet

Respondent: Biomedical Waste Solutions, LLC
Case ID No.: 38713
Reg. Ent. Reference No.: RN105008437
Media: Medical Waste
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$50	13-Sep-2009	14-Sep-2009	0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to accurately prepare and submit an updated transporter of medical waste registration. The date required is one day prior to the date of the investigation and the final date is the 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	\$50	TOTAL	\$0
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Screening Date 13-Nov-2009

Docket No. 2009-1861-MSW-E

PCW

Respondent Biomedical Waste Solutions, LLC

Policy Revision 2 (September 2002)

Case ID No. 38713

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105008437

Media [Statute] Medical Waste

Enf. Coordinator Tate Barrett

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 330.1211(j)

Violation Description

Failed to deposit untreated medical waste at an authorized facility. Specifically, the Respondent deposited untreated medical waste at a facility not authorized by the Commission from October 6, 2008 through March 12, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 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 \$7,500

\$2,500

Violation Events

Number of Violation Events 6

157 Number of violation days

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$15,000

Six monthly events are recommended for the period of time (October 6, 2008 to March 12, 2009) waste was delivered to an unauthorized facility.

Good Faith Efforts to Comply

25.0% Reduction

\$3,750

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

Notes

The Respondent came into compliance on March 12, 2009, prior to the NOE dated November 5, 2009.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23,598

Violation Final Penalty Total \$24,310

This violation Final Assessed Penalty (adjusted for limits) \$24,310

Economic Benefit Worksheet

Respondent: Biomedical Waste Solutions, LLC
Case ID No.: 38713
Reg. Ent. Reference No.: RN105008437
Media: Medical Waste
Violation No.: 4

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]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$22,106	6-Oct-2008	12-Mar-2009	1.35	\$1,490	\$22,106	\$23,596
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The estimated avoided cost to the Respondent for depositing biomedical waste at an unauthorized facility rather than an authorized facility. The Date Required is the date the Respondent began depositing waste at an unauthorized facility and the Final Date is the date the Respondent ceased depositing waste at an unauthorized facility.

Approx. Cost of Compliance

\$22,106

TOTAL

\$23,596

Screening Date 13-Nov-2009

Docket No. 2009-1861-MSW-E

PCW

Respondent Biomedical Waste Solutions, LLC

Policy Revision 2 (September 2002)

Case ID No. 38713

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105008437

Media [Statute] Medical Waste

Enf. Coordinator Tate Barrett

Violation Number 5

Rule Cite(s)

30 Tex. Admin Code § 330.1211(c)(1)(D)

Violation Description

Failed to have transport vehicles with the name of the transporter on the two sides and back of the cargo-carrying compartment in letters at least three inches high. Specifically, vehicle no. 44WKV7 did not have the company name on both sides and rear of the vehicle.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

20 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One monthly event is recommended from August 25, 2009 investigation date to the September 14, 2009 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$250

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes

The Respondent came into compliance on September 14, 2009, prior to the NOV dated November 5, 2009.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,621

This violation Final Assessed Penalty (adjusted for limits) \$1,621

Economic Benefit Worksheet

Respondent: Biomedical Waste Solutions, LLC

Case ID No.: 38713

Reg. Ent. Reference No.: RN105008437

Media: Medical Waste

Violation No.: 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<i>No commas or \$</i>							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$10	13-Sep-2009	14-Sep-2009	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to add identification to the sides of the vehicle. The date required is one day prior to the date of the investigation and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN603071267 Biomedical Waste Solutions, LLC Classification: AVERAGE Rating: 2.50
Regulated Entity: RN105008437 Biomedical Waste Solutions Classification: AVERAGE Site Rating: 5.00

ID Number(s): MEDICAL WASTE REGISTRATION 50100

Location: 9665 JADE AVE, PORT ARTHUR, TX, 77640

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: November 11, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 11, 2004 to November 11, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Brianna Carlson Phone: 956/430-6021

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 04/27/2009 (739667)
2 11/05/2009 (768116)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/21/2006 (515144)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 330, SubChapter Y 330.1211(m)

Description: Failure to submit an annual waste summary for 2005.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 330, SubChapter Y 330.1211(g)

Description: Failure to provide properly completed manifests.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter Y 330.1211(c)(2)(D)

30 TAC Chapter 330, SubChapter Y 330.1211(c)(2)(E)

Description: Failure to comply with vehicle requirements.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 330, SubChapter Y 330.1211(c)(1)(D)

Description: Failure to properly label cargo-carrying compartment.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter Y 330.1211(c)(2)(F)
Description: Failure to refrigerate waste held longer than 72 hours.
Self Report? NO Classification: Minor
Citation: TWC Chapter 26 26.121(a)(3)
Description: Failure to comply with Texas Water Code requirements.

- F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BIOMEDICAL WASTE
SOLUTIONS, LLC
RN105008437

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1861-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Biomedical Waste Solutions, LLC ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a medical waste collection and transporter business at 9665 Jade Avenue in Port Arthur, Jefferson County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 10, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Forty-Eight Thousand Four Hundred Ninety-Six Dollars (\$48,496) is assessed by the Commission in settlement of the violations

alleged in Section II ("Allegations"). The Respondent has paid One Thousand One Hundred Seventy-Two Dollars (\$1,172) of the administrative penalty and Nine Thousand Six Hundred Ninety-Nine Dollars (\$9,699) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Thirty-Seven Thousand Six Hundred Twenty-Five Dollars (\$37,625) of the administrative penalty shall be payable in 35 monthly payments of One Thousand Seventy-Five Dollars (\$1,075) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Updated manifesting procedures to ensure they are properly completed to include the collection dates, weights of the containers, and the required printed names and signatures of waste generators and waste primary transporter, as documented in a letter to the TCEQ Beaumont Regional Office dated September 14, 2009;
 - b. Obtained a spill kit in vehicle no. 44WKV7, as documented in a letter to the TCEQ Beaumont Regional Office dated September 14, 2009;
 - c. Applied the required identification on the two sides and back of the cargo-carrying compartment of vehicle no. 44WKV7, as documented in a letter to the TCEQ Beaumont Regional Office dated September 14, 2009;
 - d. Coated the floor and sides of the cargo compartment of vehicle nos. 44WKV7 and 69DGJ3 with an impervious, nonporous material, as documented in a letter to the TCEQ Beaumont Regional Office dated September 14, 2009;
 - e. Filled all discharge openings in vehicle no. 44WKV7 securely closed using silicone sealant, as documented in a letter to the TCEQ Beaumont Regional Office dated September 14, 2009;

- f. Submitted an updated transporter of medical waste registration providing a correct description of each transportation unit, including licence plate (tag) number, including state and year, as documented in a letter to the TCEQ Beaumont Regional Office dated September 14, 2009; and
 - g. Ceased delivering medical waste to an unauthorized facility March 12, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
 11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide the generator with a properly completed document for shipments of waste collected, in violation of 30 TEX. ADMIN. CODE § 330.1211(g), as documented during an investigation conducted on September 14, 2009. Specifically, the manifests for 2009 did not contain the collection date of the waste or the weight of the containers.
2. Failed to record the name and signature of the representative receiving the waste on the waste shipping documents, in violation of 30 TEX. ADMIN. CODE § 330.1211(h)(7), as documented during an investigation conducted on September 14, 2009. Specifically, the shipping documents did not contain the printed and signed name of the receiving representative.
3. Failed to carry spill cleanup equipment in transport vehicles, in violation of 30 TEX. ADMIN. CODE § 330.1211(c)(1)(C), as documented during an investigation conducted on September 14, 2009. Specifically, vehicle no. 44WKV7 did not have spill cleanup equipment.
4. Failed to comply with cargo compartment requirements, in violation of 30 TEX. ADMIN. CODE § 330.1211(c)(2), as documented during an investigation conducted on September 14, 2009. Specifically, vehicle nos. 44WKV7 and 69DGJ3 contained exposed wood floors and sides which is not impervious, nonporous material, vehicle no. 44WKV7 did not have plugs for the discharge openings, and the vehicles did not contain refrigeration units to maintain medical waste at the required temperature.
5. Failed to complete registration forms provided by the Commission and provide a description of each transportation unit, including license plate (tag) number, including state and year, at least 60 days prior to commencing operations, in violation of 30 TEX. ADMIN. CODE § 330.9(l)(1)(C)(iii), as documented during an investigation conducted on

September 14, 2009. Specifically, the Respondent was utilizing vehicle no. 44WKV7, however, vehicle no. 09ZCF5 was listed on the registration.

6. Failed to maintain a copy of the registration form at the designated place of business and with each transportation unit used to transport untreated medical waste, in violation of 30 TEX. ADMIN. CODE § 330.9(l)(4), as documented during an investigation conducted on September 14, 2009.
7. Failed to deposit untreated medical waste at an authorized facility, in violation of 30 TEX. ADMIN. CODE § 330.1211(j), as documented during an investigation conducted on September 14, 2009. Specifically, the Respondent deposited untreated medical waste at a facility not authorized by the Commission from October 6, 2008 through March 12, 2009.
8. Failed to have transport vehicles with the name of the transporter on the two sides and back of the cargo-carrying compartment in letters at least three inches high, in violation of 30 TEX. ADMIN. CODE § 330.1211(c)(1)(D), as documented during an investigation conducted on September 14, 2009. Specifically, vehicle no. 44WKV7 did not have the company name on both sides and rear of the vehicle.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Biomedical Waste Solutions, LLC, Docket No. 2009-1861-MSW-E" to:

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

2. It is further ordered that the the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, purchase refrigerated vehicles to transport all untreated medical waste that will be held longer than 72 hours or create written procedures to prevent holding unrefrigerated medical waste longer than 72 hours; and

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Szolter

For the Executive Director

Date 10/29/2010

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

W Sonnier

Signature

Date 9/7/2010

WES SONNIER

Name (Printed or typed)
Authorized Representative of
Biomedical Waste Solutions, LLC

Title PRESIDENT

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

