

Executive Summary – Enforcement Matter – Case No. 41426

MHBS, Inc.

RN106084619

Docket No. 2011-0524-MSW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

MHBS, 509 West Sixth Street, Yorktown, Dewitt County

Type of Operation:

Solid waste hauling business

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: July 1, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$900

Amount Deferred for Expedited Settlement: \$180

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$720

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): January 19, 2011, January 20, 2011, and January 21, 2011

Complaint Information: Three complaints were received alleging unauthorized disposal of waste on property owned by the Respondent.

Date(s) of Investigation: January 24, 2011

Date(s) of NOE(s): March 29, 2011

Executive Summary – Enforcement Matter – Case No. 41426

MHBS, Inc.

RN106084619

Docket No. 2011-0524-MSW-E

Violation Information

Failed to ensure that all waste collected is unloaded only at facilities authorized to accept the type of waste being transported. Specifically, the Respondent transported and disposed of municipal solid waste (“MSW”) at an unauthorized site [30 TEX. ADMIN. CODE §§ 330.103(b) and 330.15(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:

- a. Submitted documentation demonstrating that all MSW has been removed from the Site and disposed of at an authorized facility on March 14, 2011; and
- b. Developed and implemented procedures to ensure that all waste collected is transported to authorized facilities on April 21, 2011.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

TCEQ SEP Coordinator: N/A

Respondent: Robert Muniz, Owner, MHBS, P. O. Box 1191, Yorktown, Texas 78164

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	4-Apr-2011	Screening	5-Apr-2011	EPA Due	
	PCW	4-Apr-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	MHBS, Inc.
Reg. Ent. Ref. No.	RN106084619
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1	
Enf./Case ID No.	41426	Order Type	1660	
Docket No.	2011-0524-MSW-E	Government/Non-Profit	No	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Mike Pace	
Multi-Media		EC's Team	Enforcement Team 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$100**

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

Total EB Amounts: \$30
 Approx. Cost of Compliance: \$3,723

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$900**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$900**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$900**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$180**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **\$720**

Screening Date 5-Apr-2011

Docket No. 2011-0524-MSW-E

PCW

Respondent MHBS, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41426

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106084619

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 5-Apr-2011

Docket No. 2011-0524-MSW-E

PCW

Respondent MHBS, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41426

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106084619

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 330.103(b) and 330.15(c)

Violation Description Failed to ensure that all waste collected is unloaded only at facilities authorized to accept the type of waste being transported. Specifically, the Respondent transported and disposed of municipal solid waste at an unauthorized site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				X
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes: Human health and the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 70

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

Violation Base Penalty \$1,000

One quarterly event is recommended from the January 24, 2011 investigation date to the April 5, 2011 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$100

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

Notes: The Respondent came into compliance on April 21, 2011, after to the Notice of Enforcement dated March 29, 2011.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$30

Violation Final Penalty Total \$900

This violation Final Assessed Penalty (adjusted for limits) \$900

Economic Benefit Worksheet

Respondent MHBS, Inc.
Case ID No. 41426
Reg. Ent. Reference No. RN106084619
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$2,723	24-Jan-2011	14-Mar-2011	0.13	\$18	n/a	\$18
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	24-Jan-2011	21-Apr-2011	0.24	\$12	n/a	\$12

Notes for DELAYED costs

Actual cost (\$2,723) to dispose of approximately 513 cubic yards of waste at an authorized facility per receipts submitted and the estimated cost (\$1,000) to develop and implement procedures to ensure that all waste collected is transported only to authorized facilities. The Date Required is the investigation date and the Final Date is the compliance date.

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

\$3,723

TOTAL

\$30

Compliance History

Customer/Respondent/Owner-Operator:	CN603811514 MHBS, Inc.	Classification:	Rating:
Regulated Entity:	RN106084619 MHBS	Classification:	Site Rating:
ID Number(s):	MUNICIPAL SOLID WASTE NON	ID NUMBER	UNA455140084
	MUNICIPAL SOLID WASTE NON	ID NUMBER	R14106084619
Location:	509 W SIXTH ST, YORKTOWN, TX, 78164		
TCEQ Region:	REGION 14 - CORPUS CHRISTI		
Date Compliance History Prepared:	April 04, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 04, 2006 to April 04, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Mike Pace	Phone:	(817) 588-5933

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 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: N/A Repeat Violator: NO | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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	03/29/2011	901067
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 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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
MHBS, INC.
RN106084619**

**§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2011-0524-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 MHBS, Inc. ("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, owner and operator of a solid waste hauling business located at 509 West Sixth Street in Yorktown, Dewitt County, transported and disposed of solid waste at an unauthorized disposal site at 838 State Highway 72 West in Yorktown, Dewitt County, Texas ("Site").
2. The Site involves or involved the management of municipal solid waste ("MSW") 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 April 3, 2011.
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 Nine Hundred Dollars (\$900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Twenty Dollars (\$720) of the administrative penalty and One Hundred Eighty Dollars (\$180) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed

Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

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 Site:
 - a. Submitted documentation demonstrating that all MSW has been removed from the Site and disposed of at an authorized facility on March 14, 2011; and
 - b. Developed and implemented procedures to ensure that all waste collected is transported to authorized facilities on April 21, 2011.
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 a transporter of MSW, the Respondent is alleged to have failed to ensure that all waste collected is unloaded only at facilities authorized to accept the type of waste being transported, in violation of 30 TEX. ADMIN. CODE §§ 330.103(b) and 330.15(c), as documented during an investigation conducted on January 24, 2011. Specifically, the Respondent transported and disposed of municipal solid waste at an unauthorized site.

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: MHBS, Inc., Docket No. 2011-0524-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. 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 operations referenced in this Agreed Order.
3. 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.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. 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 Srdien

For the Executive Director

7/6/2011

Date

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.

R. Muniz

Signature

5-31-11

Date

Robert Muniz

Name (Printed or typed)
Authorized Representative of
MHBS, Inc.

Owner

Title

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.