

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
04 DEC 23 AM 10:38
REGIONAL HEARING CLERK
EPA REGION 6

IN THE MATTER OF:

Baylor Scott & White Health

RESPONDENT

§
§
§
§
§
§
§
§

Administrative Compliance Order on Consent
USEPA Docket No. RCRA-06-2024-0911

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

I. PRELIMINARY STATEMENT

1. This Administrative Compliance Order on Consent (“ACOC”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA”) and Respondent, Baylor Scott & White Health (“BSW” or “Respondent”). The facilities covered by this ACOC include:
 - a) The Baylor Scott & White Medical Center - Plano facility located at 4700 Alliance Blvd in Plano, TX 75093 (“Plano Medical Center facility”),
 - b) The Baylor Scott & White The Heart Hospital – Denton facility located at 2801 South May Hill Rd in Denton, TX 76208 (“Denton facility”),
 - c) The Baylor Scott & White The Heart Hospital – Plano facility located at 1100 Allied Dr in Plano, TX 75093 (“Plano Heart facility”),
 - d) The Baylor Scott & White Medical Center - McKinney facility located at 5252 West University Dr in McKinney, TX 75071 (“McKinney facility” and

collectively with the Plano Medical Center facility, the Plano Facility, and the Plano Heart facility, the “Facilities”).

2. Notice of this action has been given to the state of Texas, under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2)¹.
3. For the purpose of these proceedings, BSW admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this ACOC. This ACOC states a claim upon which relief may be granted.
4. Respondent explicitly waives any right to contest the allegations and right to appeal the proposed final order contained in this ACOC and waives all defenses which have been raised or could have been raised to the claim in the ACOC.
5. Respondent consents to the issuance of the ACOC hereinafter recited and consents to the specific stated Compliance Order, Section VI, of this ACOC.

II. JURISDICTION

6. This ACOC is issued by the EPA pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this ACOC under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

¹ On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the “EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 10, 2020); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the “EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” may vary slightly from the State of Texas’ published version. The corresponding C.F.R. citations are also provided.

7. Respondent agrees to undertake and complete all actions required by the terms and conditions of this ACOC. In any action by the EPA or the United States to enforce the terms of this ACOC, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this ACOC and agrees not to contest the validity of this ACOC or its terms or conditions.

III. STATEMENT OF PURPOSE

8. This ACOC provides for the resolution of EPA Region 6's investigation of Respondent's Facilities.
9. In entering into this ACOC, the mutual objectives of EPA, Region 6 and Respondent are to remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving solid waste and hazardous waste, and to ensure that the injunctive relief that Respondent will complete as described in the Section VI, Compliance Order, is protective of human health and/or the environment.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Respondent is an authorized corporation in the state of Texas.
11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 Texas Administrative Code ("Tex. Admin. Code") § 3.2(25), [40 C.F.R. § 260.10].
12. The Facilities identified in Paragraph 1 of this ACOC are "facilities" within the meaning of 30 Tex. Admin. Code § 335.1(60), [40 C.F.R. § 260.10].

13. BSW owns and operates hospitals that provide general and specialized medical and surgical procedures and care.
14. From April 2022 through July 2023, EPA conducted a RCRA record review of the Facilities' activities as a generator of hazardous waste.
15. EPA discovered that Respondents generated and offered for transport and treatment hazardous wastes as defined in 30 Tex. Admin. Code § 335.1(82) [40 C.F.R. § 261.3].
16. Based on its review, EPA determined that during the years 2019, 2020, and 2021, the Facilities generated hazardous waste streams in quantities that exceeded the threshold amount of 1 kilogram of acutely hazardous waste per month, which qualified the Facilities for the large quantity generator ("LQG") status established under 30 Tex. Admin. Code, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.
17. BSW is a "generator" of "hazardous wastes" at the Facilities, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), 30 Tex. Admin. Code §§ 335.1(65) & (69), [40 C.F.R. Parts 260 and 261].
18. As a generator of hazardous waste, BSW is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 Tex. Admin. Code Chapter 335, Subchapter C, [40 C.F.R. Parts 262 and/or 270].
19. The state of Texas adopted the RCRA Pharmaceuticals Rule in February 2022, established under 30 Tex. Admin. Code § 335, Subchapter W [40 C.F.R. § 266 Subpart P].

20. The Facilities notified the state of Texas of their intent to operate under the Pharmaceuticals Rule in April 2022.
21. On July 5, 2022, EPA submitted to BSW an Opportunity to Confer letter (“Letter”). EPA conferred with BSW regarding the violation alleged herein on December 12, 2022, and provided an opportunity for BSW to submit additional information or materials. Respondent submitted additional materials by correspondence that are incorporated herein by reference and made part of the Administrative Record.

V. VIOLATIONS ALLEGED

Claims i. Notification Requirements

22. The allegations in Paragraphs 1-21 are realleged and incorporated herein by reference.
23. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person. No identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
24. Respondent did not file with the Administrator an initial or subsequent notification to accurately state the general description of its hazardous waste activities and/or its generation and management of hazardous waste of the Facilities listed in Paragraph 1 during January 2019 through April 2022, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

25. At all times relevant to this ACOC, Respondent failed to comply with its notification requirements in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

VI. COMPLIANCE ORDER

26. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within thirty (30) calendar days of the effective date of the settlement agreement, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has assessed all of its solid waste streams to determine the accurate waste codes and has developed and implemented Standard Operating Procedures to ensure that BSW is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for: (a) making hazardous waste determinations; (b) managing hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing the manifests; and (e) meeting the requirements of the land disposal restrictions; and
- B. BSW shall certify that its aforementioned facilities have accurately and adequately complied with their RCRA Section 3010 Notification.

27. In all instances in which this ACOC requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of Baylor Scott & White Health and shall include the following certification:

“I certify under the penalty of law that this document and all of its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Copies of all documents required by this ACOC shall be sent to the following:

U.S. EPA, Region 6
Enforcement and Compliance Assurance Division (ECDSR)
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
ATTN: Erin Young-Dahl

Where possible, notice shall be sent electronically by email to Erin Young-Dahl, at youngdahl.erin@epa.gov.

VII. TERMS OF SETTLEMENT

i. Modification

28. The terms, conditions, and compliance requirements of this ACOC may not be modified or amended except upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

ii. Indemnification

29. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this ACOC, nor shall EPA or the United States Government be held out as a party to any contract entered into by Respondent in carrying out the activities required by this ACOC.

iii. Record Preservation

30. Respondent shall preserve, during the pendency of this ACOC, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors, which in any way relate to this ACOC regardless of any document retention policy to the contrary.

iv. Cost

31. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

v. Reservation of Rights

32. Notwithstanding any other provisions of this ACOC, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facilities, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
33. EPA reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this ACOC.
34. This ACOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claim, and/or authorities, civil or criminal, which EPA has

under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States. Further, this ACOC does not resolve Respondent's liability for Federal civil penalties for the violations and facts set forth herein.

vi. Termination and Satisfaction

35. When Respondent believes that it has complied with all the requirements of this ACOC, including compliance with the Compliance Order, Respondent shall so certify in writing and in accordance with the certification language set forth in Section VI (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this ACOC is terminated on the basis of Respondent's certification.
36. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this Administrative Compliance Order on Consent, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

Complainant:

Erin Young-Dahl
youngdahl.erin@epa.gov

Respondent:

Tim Collins
Timothy.Collins@BSWhealth.org

vii. Effective Date of Settlement

37. This ACOC shall become effective upon filing with the Regional Hearing Clerk.

RCRA-06-2024-0911
Baylor Regional Medical Center - Plano

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT:**

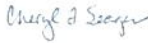
FOR THE RESPONDENT:

Date: 11/27/23


Baylor Scott & White Health

FOR THE COMPLAINANT:

Date: November 30, 2023


Digitally signed by
CHERYL SEAGER
Date: 2023.11.30
16:29:45 -06'00'

Cheryl Seager, Director
Enforcement and
Compliance Assurance Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing ACOC is hereby ratified. This Final Order shall not in any case affect the right of the EPA or the United States to pursue appropriate civil penalties, injunctive or other equitable relief or criminal sanctions for any violations of law, including those violations alleged herein. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the Compliance Order, Section VI, and the Terms of Settlement, Section VII, as set forth in this ACOC. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

**THOMAS
RUCKI**

Digitally signed by
THOMAS RUCKI
Date: 2023.12.04
10:12:53 -05'00'

Thomas Rucki
Regional Judicial Officer

RCRA-06-2024-0911
Baylor Regional Medical Center - Plano

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Compliance Order on Consent was delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the email addresses:

Copy via Email to Complainant:
youngdahl.erin@epa.gov

Copy via Email to Respondent:
Timothy.Collins@BSWhealth.org

LORI
JACKSON

Digitally signed by LORI
JACKSON
Date: 2023.12.04
14:04:08 -06'00'

Ms. Lori Jackson
Paralegal