

Shri I.M. Nanavati Memorial National Moot Court Competition 2019-20

Moot Proposition

Applicants (Original Respondents): 1) Central Pollution Control Board
2) State Pollution Control Board
3) State of Morgalia (served through Collector)
4) Medfoil Multi-Specialty Hospital

Intervener: 1) Hospitals Association of Arese

Versus

Respondent (Original Applicant): 1) Mr. Satyajeet Ghosh

1. Arese, a South Asian Country is a union of 29 states, a land of many small and big rivers (including trans-boundary rivers) and is having a written Constitution and a quasi-federal system of government with strong centralizing tendency. The main economic activity in the country is Agriculture but due to shortage of water, it is being significantly affected since the past two decades. The Constitution of Arese makes the provision of healthcare the responsibility of the state governments. It makes each state responsible for raising the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.
2. With the constant increase in the population, the requirement for health care facilities are increasing, but with those specific laws are required to be enacted to dispose of the medical waste generated from the health care units/hospitals. In a World Health Organization (WHO) meeting held at Geneva, in June 2007, core principles for achieving safe and sustainable management of health-care waste were developed. It was stressed that through right investment of resources and complete commitment, the harmful effects of health-care waste to the people and environment can be reduced.
3. Serious questions are being raised about economic and environmental effects of Bio-Medical Waste (BMW) in developing countries in recent times. BMW although constitutes a small portion of the total municipal waste generated, needs special handling and treatment as it is highly infectious and can pose a serious threat to human health if

not managed in a scientific manner. In fact, the problem of BMW is more serious and needs attention because of its hazardous nature rather than the quantity.

4. With the expansion of tourism on one side and boom in information technology on the other, the state of Morgalia, the capital of Arese administration is struggling to provide improved infrastructure while trying to cope with its massive unplanned development. It is one of the historic city and one of the most polluted cities in the world. The major problem which the city is facing, is the disposal of solid waste and bio-medical waste and its segregation. Although several initiatives have been undertaken by the State Pollution Control Board for managing hospital waste in the city, there still exist several missing links that have serious implications on human health and ecology of Morgalia.
5. There are number of occupiers which have established a Common Bio Medical Waste Management Facility (CBMWTF) in the state for treating the bio-medical waste generated. A private hospital named “Medfoil Multi-Specialty Hospital” was established in May, 2010 and was registered under the Indian Trusts Act, with the capacity of 52 beds. It has a team of 21 doctors, 20 nurses and its own Pathology Laboratory and other specialized wards and units. The Hospital has an Infection Control Committee consisting of five members which includes 2 Doctors and 3 Nurses working in the Hospital. The Applicant, Mr. Satyajeet Ghosh, a resident of the State of Morgolia, was hospitalized in Medfoil Hospital for treatment of Kidney in September, 2015. While undergoing the treatment, he was affected by Tuberculosis due to which his stay was prolonged for one and half months in the said hospital. The Applicant observed that the Bio Medical Waste generated is not segregated properly and is not disposed regularly, due to which health of the people is adversely affected. Bio-medical waste is scattered in the open and has also spread out into river *Jalshakti*, flowing alongside the Hospital.
6. Being a public spirited person associated with many social organizations, he approached the National Green Tribunal (NGT) as the Applicant in the instant case; after having witnessed negligent and casual manner in which the Hospital and State Government had been handling the issue pertaining to Bio medical waste disposal. He approached the concerned authorities on several occasions and made number of complaints/representations and then filed the case in National Green Tribunal. The Authorities issued a cumulative report on the functioning of the Bio Medical Waste disposal system of the Hospital and other state hospitals¹. Upon the basis of this report, he then approached NGT. The applicant joined several parties including the hospital, the state and central pollution control boards, as well as the collector, for their inaction and lack of performance of mandatory duty which was to be done by them. They were also not following the prescribed disposal standards for Biomedical Waste.

¹Annexure 01 to the Moot Proposition

7. The Applicant had also, under The Right to Information Act, 2005 sought information regarding various hospitals and their biomedical waste disposal systems. The information obtained mentioned that out of about 589 health-care facilities in Morgolia, 168 have their own treatment plants. The rest have either applied for operation of treatment plant or are using private agencies for the purpose of treatment, handling and disposal of bio-medical waste.
8. A report published in *Aresean Standards*, a well reputed local daily, clearly pointed out the hazards which were observed in the local sterilization camps that were conducted in the health care facilities. There was no segregation of the bio-medical waste in color coded bags and bins and in case where there was segregation, such bio-medical waste was not being sent to the biomedical waste treatment facility for proper treatment and disposal. Therefore, it was pointed out that neither the medical facilities are doing their duty nor the prescribed authority is taking notice of the situation. The medical waste is being constantly mixed with municipal waste and is scattered and piled up at public places even in the main districts of the State of Morgalia.
9. Moreover, it was stated in the report that the waste, right out of the operation theatres and treatment rooms, were not properly segregated and left to be out in the open grounds for days at stretch. One area and the locality started stinking and upon complaints from the locals, it was shifted to some other dumpyard but never disposed of in the manner prescribed under the law.
10. The Applicant further contended that all the waste is gathered at one place, which was near to places inhabited by humans, due to which, the health of human beings and animals are getting affected and various infections and diseases are caused. Many hospitals were included in the list of defaulting hospitals. It was also found that, the hospitals had left their wastage untreated for days, which lied outside the hospital and was not even bothered to be cleaned.
11. The institutions like the Community Health Center at Shyampur, near to the Med Foil Hospital, on which more than a thousand residents depend for health security, instead of being a facility for health recovery of patients is feared of putting the health of even a fit man at risk. Further the case of Applicant is that irrespective of enforced legislations and the Central Pollution Control Board's guidelines directing for proper disposal and handling of bio-medical waste, the citizens of the State of Morgalia are being constantly exposed to a life threatening situation.
12. As per the provisions of prevalent law, the waste like microbiological and biotechnical wastes are to be treated under the given Schedule by local autoclaving/micro waving/incineration. But in the State of Morgalia, most of such waste is found to be disposed in haphazard manner, which is being collected in bags and dumped either at any

garbage dumping site or is reached over and found with the rag pickers. In the State of Morgalia, some of the medical facilities are having incinerators, but most of the medical facilities dump such waste in garbage. Further many times, at various junctions and intersections, various transporters carrying such waste were accosted by various police authorities and it was found that direct and unsegregated dump of rotten and stale waste, which was extremely harmful to humans and environment in general, was done in such trucks.

13. It is important to be noted that certain states inside the territory of Arese, such as the states of Zandania, Amerdania and Kendry are involved in exporting of bio-medical and other hazardous wastes to certain underdeveloped countries like Vanitio, Wander and Wales Islands, etc. However, no progress whatsoever as to formation of model rules of conduct and procedure have been made by the State Pollution Control Boards or the Central Pollution Control Board for transboundary movement of such hazardous bio-medical waste. Moreover, there is no statistical data shown as to compliance of the rules formed in this regard. The populations of the importing countries have also raised concerns in the local courts with regards to import of such bio-medical and hazardous waste.
14. These states not only have an export market of these wastes but also have a high import market for importing of such wastes. Three Hospitals and dispensaries in the state of Kendry were charged with using outdated, expired and waste materials imported from a developed country of Silversands. This caused death of 15 patients in the concerned hospitals. The proceedings of the same are pending before the local trial court. This suggests that no rules or regulations are formed for the import or export of such biomedical and hazardous waste and even if formulated there are no checks and sanctions provided for its implementation and therefore making the rules only a mere text on the paper. These imported biomedical waste dumps have led to double the amount of untreated biomedical local wastage.
15. It is further averred that there is no implementation mechanism with reference to reuse of the bio-waste (if any possible). The materials such as plastics which are being used and are non-reusable or non-recyclable, make the industry more prone to environmental pollution. Hence, the non-disposal of all these materials aggravates the whole issue, as pointed out by the Original Applicant.
16. The Applicants before the Supreme Court (Original Respondents) have primarily contested the jurisdiction of the National Green Tribunal to hear this matter in accordance with the dicta and well established principles of law and judicial decisions. Further, the Original Respondents through their replies stated that there is no violation of Laws and the Government and the authorities are doing their work as per the relevant Rules in respect of bio-medical and Municipal Solid Waste (MSW). The State Authorities submitted their reply and stated that they are committed to implement the laws relevant to

conservation of environment and control of pollution in all respects including safe disposal of bio medical waste as well as MSW. Further, it is stated that all precautionary and preventive measures have been initiated to control pollution with safeguards. According to the Original Respondents, they are implementing the Rules, in the State of Morgalia. So far as the Original Respondent No. 1 is concerned, it has further stated that they are responsible for compliance of the Rules. They are sharing responsibilities with the District Municipal Commissioners and the Chief Municipal Officer of the local bodies to implement the work relating to segregation, transportation, collection and safe disposal of MSW as well as bio medical waste separately with enforcement of the provisions of the Rules and they have also averred that proper compliance has been ensured, for the purpose of which, they attached the report stating the same.²

17. It was also contended that, there was no way in which the original applicant could have such detailed particulars, even if accepted in the face value and therefore, these contentions had clearly arisen out of vengeance and ill-will. Further, it was submitted that, each waste disposal system had different occupier and therefore persons to be held responsible were not same. Thus, a common conclusion for the failure of different systems cannot be imposed on the authorities only and has to be assessed on basis of each individual situation and facts.
18. It is also a fact that site of dumping/disposal of city garbage/municipal waste has been identified by the Municipal authorities in village Samuel near Broski, in Daniel district, State of Morgalia. Municipal Corporation, has provided one acre of land to common treatment facility for bio medical waste site. Bio medical waste is being segregated at the source by the operators of the common treatment facility and is being disposed of at the site by using chemical treatment and deep burial methodology. Further, the liability of the operator was limited and fixed to the task of handling the waste properly and not any further.
19. Original Respondents have submitted that Nursing Homes, health care facilities and hospitals are complying and implementing the provisions of Rules. The waste generated from the hospitals is being collected, segregated and transported by the operators of common treatment facility and is being disposed of at the identified site in village Samuel with chemical treatment and deep burial method.
20. It was submitted that the regular inspections of hospitals/nursing homes and common bio medical treatment facility is being carried out by the Original Respondent Authorities. Notices/directions and guidelines have been issued to the hospitals, nursing homes, etc. for violation and non-compliance of the conditions incorporated in the authorizations, which are issued by the Board and replied to by hospitals. The hospital has also submitted various compliance reports. The same being annexed herewith.³ Common bio medical

²Annexure 02 to the Moot Proposition

³Annexure 03 to the Moot proposition

waste treatment and disposal facilities have been authorized by the Original Respondent Authorities for dealing in collection, transportation, treatment and scientific disposal of bio medical waste generated from hospitals/nursing homes/health care facility located in the Municipal areas of Daniel city. The said common facilities are in operation since October, 2010. The Board has already accorded authorization on 13th October, 2010 for collection, segregation, transportation and treatment along with disposal of bio medical waste. Similarly, other common bio medical facilities have also been established in July, 2007 at Pirian and Mereen. The name of the operators are M/s Adam Gomes BioMac, which is in industrial area, Pirian and Aroma social service Sansthan, in district Carth are also engaged under the common bio medical waste facility since 2010.

21. It was also submitted that the provisions, which are complained to be violated were non mandatory in nature and the Original Respondents are also supervising the compliances, as per provisions of Rules, along with hospital waste management. It is also regularly monitoring health facilities and bio medical common treatment facility. The Original Respondents are regularly submitting annual report/information on bio medical waste management to CPCB. The Original Respondents have stated that segregation of bio medical waste is being done by the hospital management at source and collected in various colour coded bins or containers and the same is being disposed of in secured land of common facility.
22. The concerned authorities are performing duties as per the Rules. Common treatment plant is already in service since 2007-08. The total quantity of bio medical waste is being collected by the operators of the common treatment facility and disposed of by using deep burial method in accordance to the Rules. There is no mixing of bio medical waste with MSW.
23. The Original Respondents have further stated that bio medical waste generated at different hospitals, nursing homes, health care facilities and pathological labs are being segregated at source and is being collected and transported by the operators for common treatment facility. After treatment/disinfection the bio medical waste is being disposed of at the earmarked disposal site by using deep burial method. Hence, no mixing activity in the MSW is being done.
24. It has stated that the Original Respondent 2 is regulatory authority working under the Municipal Housing and Environment Department, Govt. of Morgalia and is looking after the matters relating to violation of Rules. It has issued several Notices to the hospitals/health facilities, which are established in the State, pertaining to non-compliance of all the conditions incorporated in the authorization and the Rules. It was also submitted that, Public Health was a matter of state under the Constitution.
25. Considering the arguments of both the sides, the Tribunal, deciding the issue of compliance of BMW Rules in Morgalia had earlier directed that a detailed action plan

must be submitted to CPCB. Further, the NGT considered the submissions of both sides and concluded that, the hospitals were one of the corner stones on which the whole environmental issue of bio medical waste disposal depended. If such hospitals, in the rush for commercial gains circumvented the rules and regulations, it shall tantamount to gross infringement of human and environmental rights. Hence, the horses needed to be bridled as it had become the need of the hour. Therefore, The NGT ordered that every hospital must submit their annual compliance reports regarding bio medical waste disposal of last 3 years within one week. The CPCB must consider the reports and the defaulting hospitals should be vacated within the next two weeks with all patients being shifted with due care to other hospitals and the licenses of such hospitals shall be revoked with immediate effect.

26. In view of the consideration of present material on record as well, the CPCB was ordered to pay a fine of Rs. 1 Crore which was to be deposited in the tribunal within a weeks' time. The forum further found Med-Foil Hospital in contravention of provisions of the law regarding biomedical waste disposal and ordered it to pay Rs. 1 crore in addition to orders to submit relevant annual compliance reports, failing which, the license of this hospital shall be also revoked.
27. Aggrieved by the order of the National Green Tribunal, the Authorities along with the Hospital filed SLP in Supreme Court. Since the impugned order concerned various hospitals across the country, several hospitals have intervened in the matter. The Intervention Application has been granted.

Note: All the Laws of Arese are pari materia to the Union of India.

Disclaimer: This problem is the hypothetical moot problem. It is only for the academic purpose having no concern with any of the pending/decided cases before any court and all details and name of parties are fictitious and nothing to do with reality, even if fond similar it is only coincident.

ANNEXURE 01

REPORT ISSUED BY CONCERNED AUTHORITY

REPORT NO. 1

State Pollution Control Board

Ministry of Environment

Forest & Climate Change

Waste Management

Division

Morgalia — 600696

Format for Submission of the Annual Report: Information on Bio-medical Waste Management

By the SPCBs/PCCs to CPCB for the period January, 2017 to December, 2017

(1) Name of the State Pollution Control Board / Pollution Control Committee:-

Morgalia State Pollution Control Board, Newcorn Lands

(2) Name of the Nodal Officer with contact telephone no. & e-mail:-

Sri Rocky Singh, 9431585641

(3) Total no. of HCFs :- 785
(i) Bedded 400

(ii) Non-bedded	385
(3) Total no. of beds (average 50 beds per Hospital)	:- 12.400
(5) Status of authorisation	
a) Total no. of HCFs applied for new authorisation	: 132
b) Total no. of HCFs granted authorisation	113
c) Total no. of application under consideration	
d) Total no. of application rejected	:
e) Total no. of HCFs in operation without applying for authorization	: 365
(6) Quantity of Bin-medical Waste Generation (in kg/day)	
a) Bio-medical waste generation by bedded hospitals (in kg/day):	418.6
b) Bio-medical waste generation by non-bedded hospitals (in kg/day):	396.6
c) Any other: -	
Total:	815.2 kg/day

S. No.	Healthcare Facility	Treatment & Disposal				
		No. of HCFs having captive treatment facilities	Total installed captive treatment facility			Total bio-medical waste treated & disposed by captive treatment facilities in kg/day
			Type of treatment equipment	No.	Capacity (in kg/day)	
(i)	Bedded		• Incinerator	17	1500	1371.2141
			• Plasma Pyrolysis	Nil	Nil	Nil
			• Autoclaves	181	5160	568.4864
			• Microwave			
			• Hydroclave			
			• Shredder			
			• Sharps encapsulation or concrete pits	Nil	Nil	Nil
			• Deep burial pits	Nil	Nil	Nil
			• Any other treatment equipment	213	720	411.6167
			• Incinerator	Nil	Nil	Nil
			• Plasma Pyrolysis	374	800	1834.721
			• Autoclaves	Nil	Nil	Nil
			(ii)	Non-bedded		• Microwave
• Hydroclave	Nil	Nil				Nil
• Shredder	17	55				26.952
• Sharps encapsulation or concrete pits	Nil	Nil				Nil
• Deep burial pits	Nil	Nil				Nil
• Any other treatment equipment	25	55				13.8202
				8690	4333.6237	

- (8) Total bio-medical waste generation : 8500
- (9) Total bio-medical waste treated & disposed, CBWTF (in kg/day) : 4200
- (10) Total no. of violation by:
- CBWTF : 245
- (11) Show cause notices/directions issued to defaulters:
- CBWTF : 230
- (12) Any other relevant information:
- A) No. of CBWTF installed liquid waste treatment facility : 6



REPORT NO. 2

REPORT ISSUED BY CONCERNED AUTHORITY

Pertaining to Med-foil Hospital

Parameter	BMW Rules		Hospital emissions Report
	Limit (mg/Nm ³) unless stated	Sampling duration (min) unless stated	Limit (mg/Nm) (at 12% CO ₂ correction)
Particulate matter	50	30 or 1 Nm ³ of sample volume, whichever is more	60
Nitrogen oxides NO and NO ₂ expressed as NO ₂	400	30 for online sampling or grab sample	428
HCl	50	30 or 1 Nm ³ of sample volume, whichever is more	25
Total dioxins and furans	0.1ngTEQ/Nm ³ (at 11% O ₂)	8 h or 5 Nm ³ of sample volume, whichever is more	0.2ngTEQ/Nm ³ (at 11% O ₂)
Hg and its compounds	0.05	2 h or 1 Nm ³ of sample volume, whichever is more	-

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It is found out in the conclusion of this report that the incinerator emissions are above the permitted and prescribed standards of the Pollution Board. However, no amount of toxicity has been found out. Report to be served accordingly.

Parameters	Permissible limits	Hospital Emission Report
pH	6.5-9.0	10
Suspended solids	100 mg/l	85 mg/l
Oil and grease	10 mg/l	12 mg/l
BOD	30 mg/l	29 mg/l
COD	250 mg/l	269 mg/l
Bio-assay test	90% survival of fish after 96 hours in 100% effluent.	90% survival of fish

ANNEXURE 02

CENTRAL POLLUTION CONTROL BOARD

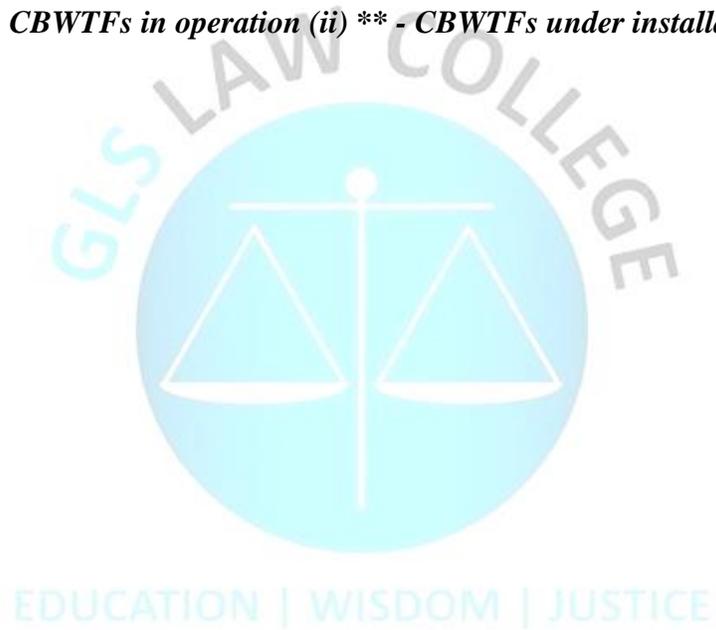
STATS AND DATA ON BIOMEDICAL WASTE DISPOSAL SYSTEMS:

The compiled status of bio-medical waste management in the Country as per annual information received from SPCBs/PCCs is given below:

No. of HCFs	2,38,259
No. of bedded HCFs	87,281
No. of non-bedded HCFs	1,51,302
No. of beds	20,94,858
No. of CBWTFs	198* + 24**
No. of HCFs granted authorization	84805
No. of HCFs having Captive Treatment Facilities	9,841
No. of Captive Incinerators Operated by HCFs	225
Quantity of bio-medical waste generated in Tonnes/day	559
Quantity of bio-medical waste treated in Tonnes/day	518
No. of HCFs violated BMW Rules	23,942

No. of Show-cause notices/Directions issued to defaulter HCFs	18,210
No. of License Revoked of HCF	589
No. of Application for revocation of License of HCF pending consideration	989

Note: (i) * - CBWTFs in operation (ii) ** - CBWTFs under installation



ANNEXURE 03
COMPLIANCE REPORT SUBMITTED BY MED-FOIL HOSPITAL

ANNUAL COMPLIANCE REPORT FILED BY MED-FOIL HOSPITAL

FOR THE PERIOD: 1st January, 2017 to 31th December, 2017

Sl. No	Particulars	:	
1.	Particulars of the Occupier	:	Dr. Vinod Rathi, CMO, MED-FOIL Hospital, Newcorn Lands, Morgolia
	(i) Name of the authorised person (occupier or operator of facility)	:	Dr. Vinod Rathi, CMO, MED-FOIL Hospital
	(ii) Name of HCF or CBMWTF	:	MED-FOIL Hospital,
	(iii) Address for Correspondence	:	B-7, ABC Locality, New Corn Lands, Morgolia
	(iv) Address of Facility	:	X-8, Area 51, Newcorn Lands, Morgalia
	(v) Tel. No, Fax. No	:	1234567888
	(vi) E-mail ID	:	vinodrathi@medfoilhospitals.ac.wv
	(vii) URL of Website	:	www.Medfoilhospitals.com.ares
	(viii) GPS coordinates of HCF or CBMWTF	:	S25 58 85 69
	(ix) Ownership of HCF or CBMWTF	:	www.Medfoilhospitals.com.ares
	(x). Status of Authorisation under the Bio-Medical Waste (Management and Handling) Rules	:	Authorisation No.:BMW/2017/CornLand/BMW/ 69 dated 18.10.17 valid up to 31.01.2020
	(xi). Status of Consents under Water Act	:	WA/2017/CornLands/WA/69 dated 18.1.2017 valid upto 31.01.2020
2.	Type of Health Care Facility	:	
	(i) Bedded Hospital	:	No. of Beds: 52
	(ii) Non-bedded hospital	:	NA
	(iii) License number and its date of expiry	:	

3.	Details of CBMWTF	:	
	(i) Number healthcare facilities covered by CBMWTF	:	125
	(ii) No of beds covered by CBMWTF	:	2500
	(iii) Installed treatment and disposal capacity of CBMWTF:	:	2000 Kg per day
	(iv) Quantity of biomedical waste treated or disposed by CBMWTF	:	1800 Kg
4.	Quantity of waste generated or disposed in Kg per annum (on monthly average basis)	:	Yellow :49.300 Category Red Category: 86.500 White: 69.300 Blue Category : 48.690 General Solid waste: NA
5.	Details of the Storage, treatment, transportation, processing and Disposal Facility		
	(i) Details of the on-site storage facility	:	Size : Capacity : 500 Kg Provision of on- : (cold storage or site storage any other provision)
	(ii) Details of the treatment or disposal facilities	:	Type of treatment Equipment: Incinerators: 12 Needle tip cutter or Destroyer: 15 Sharps Encapsulation Or concrete pit Deep burial pits:17

		Chemical disinfection: Sodium Hypochloride
	(iii) Quantity of recyclable wastes sold to authorized recyclers after treatment in kg per annum.	: Red Category : N.A.
	(iv) No of vehicles used for collection and transportation of biomedical waste	: 26
	(v) Details of incineration as hand ETP sludge generated and disposed during the treatment of wastes in Kg per day	Quantity Where disposed generat
		ETP Sludge 247 Incinerator: 298
	(vi) Name of the Common Bio- Medical Waste Treatment Facility Operator through which wastes are disposed of	: Bio-Medical Waste Disposal Experts and Bros.
	(vii) List of member HCF not handed over bio-medical waste.	N.A.
6.	Do you have bio-medical waste management committee? If yes, attach minutes of the meetings held during the reporting period	Yes. Minutes have been submitted to the concerned authorities at relevant point of time.
7.	Details trainings conducted on BMW	4 trainings were conducted (Quarterly)
	(i) Number of trainings conducted on BMW Management.	Every Quarter
	(ii) number of personnel trained	48
	(iii) number of personnel trained at the time of induction	20
	(iv) number of personnel not undergone any training so far	N.A.
	(v) whether standard manual for training is available?	Yes.
	(vi) any other information)	N.A.
8.	Details of the accident occurred during the year	N.A.
	(i) Number of Accidents occurred	N.A.
	(ii) Number of the persons affected	N.A.
	(iii) Remedial Action taken (Please attach details if any)	N.A.

	(iv) Any Fatality occurred, details.	N.A.
9.	Are you meeting the standards of air Pollution from the incinerator? How many times in last year could not met the standards?	Yes in accordance to the standards set by the Authorities
	Details of Continuous online emission monitoring systems installed	Yes in accordance to the standards set by the Authorities
10.	Liquid waste generated and treatment methods in place. How many times you have not met the standards in a year?	N.A.
11	Is the disinfection method or sterilization meeting the log 4standards? How many times you havenot met the standards in a year?	N.A.
12	Any other relevant information	: (Air Pollution Control Devices attached with the Incinerator) N.A.

Certified that the above report is for the period from January, 2017 to December, 2017

Mr. Vinod Rathi, CMO, Med-Foil Hospital

Name and Signature of the Head of the Institution

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