



west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
HAZARDOUS WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18**

TO: Charleston Area Medical Center, Inc.
ATTN: Glenn Crotty Jr., MD, VP and COO
PO Box 2069
Charleston, WV 25327

DATE: January 20, 2015

ORDER NO.: HW-15-005

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter “Director”), under the authority of West Virginia Code, Chapter 22, Article 18, Section 1 et seq. to Charleston Area Medical Center, Inc. (hereinafter “CAMC”).

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. CAMC operates three (3) hospitals (CAMC Memorial Hospital, CAMC General Hospital, and CAMC Women & Children’s Hospital) located in Charleston, Kanawha County, West Virginia. The hospitals are assigned EPA ID Nos. WVD982699035, WVD982698979, and WVD982699092, respectively.
2. On June 9, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the CAMC Memorial Hospital facility (EPA ID No. WVD982699035). During the inspection, violations of the following sections of the Code of Federal Regulations and WV Legislative Rules were observed and documented:
 - a. 40CFR262.34(c)(1)(ii) as referenced by 33CSR20 Section 5.1 – CAMC failed to clearly mark/label satellite accumulation containers with the words “Hazardous Waste” or other words to identify the contents.
 - b. 40CFR265.173(a) as required by 262.34(d)(2) as referenced by 33CSR20 Section 5.1 - CAMC failed to keep containers of hazardous waste closed when not adding or removing waste.

- c. 40CFR270.1(b)(1) as referenced by 33CSR20 Section 11.1 – CAMC accepted and stored hazardous waste from off-site without a permit.
- d. 40CFR262.11 as referenced by 33CSR20 Section 5.1 - CAMC failed to complete a hazardous waste determination for all wastes generated on-site, including opened, unused pharmaceuticals, contaminated protective clothing and equipment, and waste from spill cleanup.
- e. 40CFR273.13(d)(1) as referenced by 33CSR20 Section 13.1 - CAMC failed to properly containerize Universal Waste lamps and keep the containers closed during accumulation.
- f. 40CFR273.14(e) as referenced by 33CSR20 Section 13.1 - CAMC failed to label boxes of Universal Waste lamps.
- g. 40CFR273.13(d)(2) as referenced by 33CSR20 Section 13.1 - CAMC failed to properly package broken mercury-containing lamps.
- h. 40CFR273.16 as referenced by 33CSR20 Section 13.1 - CAMC failed to inform maintenance staff of proper handling and procedures appropriate to the Universal Waste lamps and mercury-containing equipment.
- i. 40CFR273.13(c)(2)(iv) as referenced by 33CSR20 Section 13.1 - CAMC failed to properly package liquid mercury in a container that meets the requirements of 40CFR262.34.
- j. 40CFR262.20(b) as referenced by 33CSR20 Section 5.1 - CAMC failed to manifest all hazardous wastes transported to permitted hazardous waste treatment, storage, or disposal facilities.

As a result of the aforementioned violations, Notice of Violation (NOV) No. 3411321-10P (A-G) was issued to CAMC Memorial Hospital.

3. On June 10, 2014, WVDEP personnel conducted an inspection of the CAMC General Hospital facility (EPA ID No. WVD982698979). During the inspection, violations of the following sections of the Code of Federal Regulations and WV Legislative Rules were observed and documented:
 - a. 40CFR262.40(a) as referenced by 33CSR20 Section 5.1 - CAMC failed to retain a copy of the signed manifest for at least three (3) years from the date the waste was accepted by the initial transporter.
 - b. 40CFR262.11 as referenced by 33CSR20 Section 5.1 - CAMC failed to complete a hazardous waste determination for all waste streams including opened, unused pharmaceutical waste, contaminated protective clothing and equipment, and waste from spill cleanups.
 - c. 40CFR263.11(a) as referenced by 33CSR20 Section 6.1 – CAMC transported hazardous waste without having obtained an EPA ID Number.
 - d. 40CFR262.20(a)(1) as referenced by 33CSR20 Section 5.1 - CAMC failed to prepare manifests for shipments of hazardous waste from this facility to CAMC Memorial Hospital and Green Valley Landfill in Ashland, KY.

- e. 40CFR268.7(a)(2) as referenced by 33CSR20 Section 10.1 - CAMC failed to provide the receiving facility with an initial one-time Land Disposal Restrictions (LDR) Notification.
- f. 40CFR262.20(b) as referenced by 33CSR20 Section 5.1 - CAMC failed to ensure proper disposal of hazardous waste at a permitted hazardous waste facility.
- g. 40CFR268.7(a)(1) as referenced by 33CSR20 Section 10.1 - CAMC failed to complete a Land Disposal determination for shipments of waste directed to Green Valley Landfill in Ashland, KY.

As a result of the aforementioned violations, NOV No. 3411321-11P (A-D) was issued to CAMC General Hospital.

- 4. On June 10, 2014, WVDEP personnel conducted an inspection of the CAMC Women & Children's Hospital facility (EPA ID No. WVD982699092). During the inspection, violations of the following sections of the Code of Federal Regulations and WV Legislative Rules were observed and documented:
 - a. 40CFR263.11(a) as referenced by 33CSR20 Section 6.1 – CAMC Transported hazardous waste without having obtained an EPA ID Number.
 - b. 40CFR262.20(a)(1) as referenced by 33CSR20 Section 5.1 - CAMC failed to manifest shipments of D001/D002/F003 hazardous waste from this facility to CAMC Memorial Hospital.
 - c. 40CFR268.7(a)(2) as referenced by 33CSR20 Section 10.1 - CAMC failed to provide LDR Notification to CAMC Memorial regarding shipments of D001/D002/F003 hazardous waste directed there from this facility.
 - d. 40CFR273.13(d)(1) as referenced by 33CSR20 Section 13.1 - CAMC failed to properly containerize Universal Waste lamps and keep the containers closed during accumulation.
 - e. 40CFR273.14(e) as referenced by 33CSR20 Section 13.1 - CAMC failed to label boxes of Universal Waste lamps.
 - f. 40CFR273.14(d)(1) as referenced by 33CSR20 Section 13.1 - CAMC failed to label containers of Universal Waste mercury-containing equipment.
 - g. 40CFR273.16 as referenced by 33CSR20 Section 13.1 - CAMC failed to inform maintenance staff of proper handling and procedures appropriate for the Universal Waste lamps and mercury-containing equipment.
 - h. 40CFR279.22 as referenced by 33CSR20 Section 14.1 - CAMC failed to mark or label drum of used oil with the words "Used Oil."
 - i. 40CFR262.11 as referenced by 33CSR20 Section 5.1 - CAMC failed to complete a hazardous waste determination for all wastes generated on-site, including opened, unused pharmaceuticals, contaminated protective clothing and equipment, and waste from spill cleanup.

- j. 40CFR261.5(g)(3) as referenced by 33CSR20 Section 3.1 - CAMC failed to ensure disposal of hazardous waste at a permitted hazardous waste treatment, storage, or disposal facility.

As a result of the aforementioned violations, NOV No. 3411321-8P (A-D) was issued to CAMC Women's & Children's Hospital.

5. On December 3, 2014, WVDEP personnel and representatives of CAMC met to discuss the terms and conditions of this Order. During the meeting, CAMC and WVDEP personnel determined that the shipment of bottom ash waste referred to in the June 9, 2014 inspection at the CAMC Memorial Hospital facility was in compliance with CAMC's Solid Waste Storage Areas and Support Facilities Permit No. SWF-7003, having a selenium concentration of 1.8 mg/L. The Permit, which contained a selenium regulatory limit of 2.0 mg/L, did not comport with the Federal Limit of 1.0 mg/L, and it was expeditiously modified accordingly. During the meeting, CAMC submitted for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when CAMC would achieve compliance with all pertinent laws and rules. WVDEP personnel subsequently approved the plan of corrective action and schedule, and it has become part of this Order. Failure to adhere to the approved plan and schedule is a violation of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 18, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. CAMC shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of CAMC's Legislative Rule violations, CAMC shall be assessed a civil administrative penalty forty-eight thousand forty-nine dollars (\$48,049) to be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. CAMC hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 of the Code of West Virginia. Under this Order, CAMC agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, CAMC does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding CAMC other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, CAMC shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after becoming aware of such a delay, notification shall be provided to the Director/Chief Inspector and CAMC shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of CAMC (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving CAMC of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject CAMC to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on CAMC, its successors and assigns.

7. This Order shall terminate upon CAMC's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Glenn Crotty Jr

Glenn Crotty Jr., MD, VP and COO
Charleston Area Medical Center, Inc.

1/21/2015

Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

revised June 2013

RECEIVED

JAN 22 2015

ENVIRONMENTAL
ENFORCEMENT

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: Charleston Area Medical Center, Inc. EPA ID Number: WVD982699035, WVD982698979, and WVD982699092

Generator Classification: undetermined

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a	2b	2c	2d, 3b, 4i	2e, 4d	2f, 4e	2g	2h, 4g	2i	2j	3a	3c, 4a	4b
a)	Harm to RCRA Program	1 to 3	1	1	2	3	1	1	1	1	1	3	1	3	3
b)	Probability of Exposure	0 to 3	1	1	3	1	0	0	1	1	2	1	0	1	1
c)	Potential Seriousness of Contamination	1 to 3	2	1	1	1	1	1	1	1	1	1	1	1	1
Average Potential for Harm Factor			1.3	1	2	1.7	0.7	0.7	1	1	1.3	1.7	0.7	1.7	1.7
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	1	3	3	1	1	1	1	1	3	1	3	3

Potential for Harm Factors

1a. - Harm to the RCRA Program

- All regulatory requirements are fundamental to the continued integrity of the RCRA Program
- Violations that undermine the statutory or regulatory purposes or procedures for implementing the RCRA program may have serious implications and merit substantial penalties. Examples include but are not limited to: failure to notify as a generator, failure to respond to an info request, failure to prepare or maintain a manifest, and operating / disposal without a permit

1b. - Probability of Exposure - factors to be considered include but are not limited to: evidence of a release, evidence of waste mismanagement, and adequacy of provisions for detecting and preventing a release

- #### 1c. - Potential Seriousness of Contamination - factors to consider include but are not limited to quantity and toxicity of wastes (potentially) released, likelihood or fact of transport by way of environmental media (e.g. air and groundwater), and existence, size and proximity of receptor populations (e.g. local residents, fish, wildlife) and sensitive environmental media (e.g. surface waters and aquifers.)

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

1)	Potential for Harm Factor	Factor Range	FOF#									
			4c	4f	4j							
a)	Harm to RCRA Program	1 to 3	1	1	3							
b)	Probability of Exposure	0 to 3	0	0	2							
c)	Potential Seriousness of Contamination	1 to 3	1	1	2							
Average Potential for Harm Factor			0.7	0.7	2.3	No						
2)	Extent of Deviation Factor	Factor Range										
	Degree of Non-Compliance	1 to 3	2	1	3							

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2a	Moderate	Minor	\$2,330	1	\$2,330
2b	Minor	Minor	\$1,000	1	\$1,000
2c	Moderate	Major	\$5,000	1	\$5,000
2d, 3b, 4i	Moderate	Major	\$4,670	3	\$14,010
2e, 4d	Minor	Minor	\$670	1	\$670
2f, 4e	Minor	Minor	\$670	1	\$670
2g	Minor	Minor	\$1,000	1	\$1,000
2h, 4g	Minor	Minor	\$1,000	1	\$1,000
2i	Moderate	Minor	\$2,330	1	\$2,330
2j	Moderate	Major	\$4,670	1	\$4,670
3a	Minor	Minor	\$670	1	\$670
3c, 4a	Moderate	Major	\$4,670	1	\$4,670
4b	Moderate	Major	\$4,670	1	\$4,670
4c	Minor	Moderate	\$1,335	1	\$1,335
4f	Minor	Minor	\$670	1	\$670
4j	Major	Major	\$8,660	1	\$8,660
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$53,355

Penalty Adjustment Factors
(pursuant to 33CSR27-6.2)

Penalty Adjustment Factors

6.2.b.1 - Good faith efforts to comply or lack of good faith - 10% decrease to 10% increase

6.2.b.2 - Degree of Willfulness and / or Negligence - 0% to 30% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.4 - History of Non-Compliance - 0% to 100% increase -
based upon review of last three (3) years - Warning = maximum of 5% each,
N.O.V. = maximum of 10% each, previous Order = maximum of 25% each

6.2.b.5 - Ability to pay a civil administrative penalty - 0% to 100% decrease

6.2.b.6 - Economic Benefit of non-compliance

6.2.b.7 - Staff Investigative Costs

6.2.b.8 - Other relevant factors determined on a case-by-case basis

Base Penalty Adjustments

(pursuant to 33CSR27-6.2)

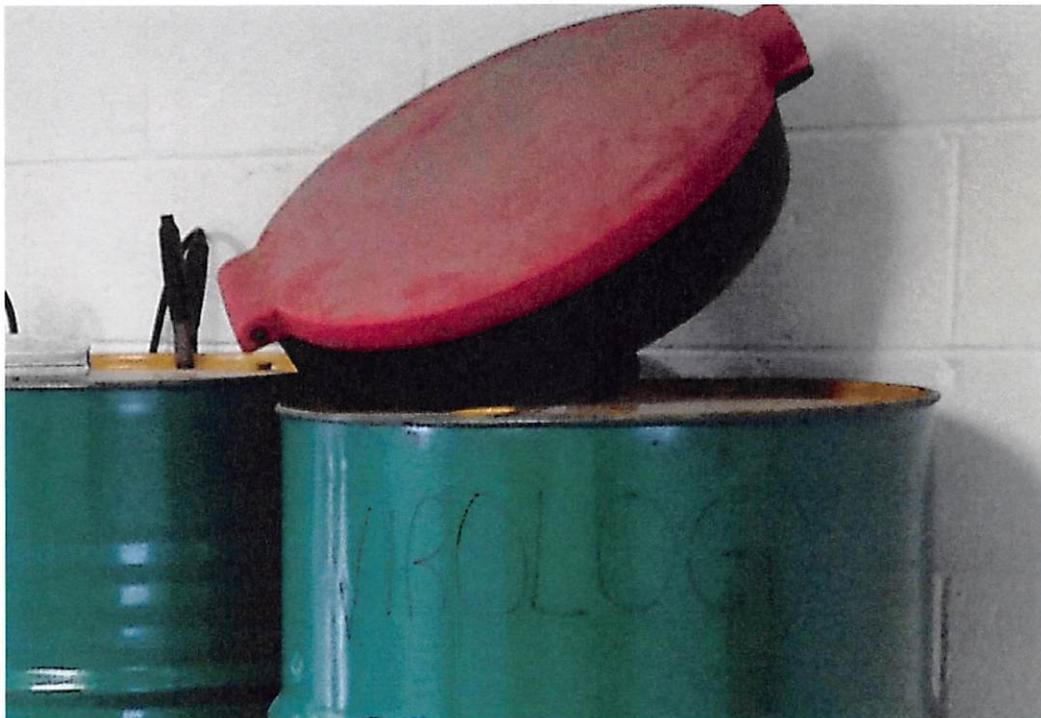
Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Good Faith - Increase			\$0
6.2.b.1 - Good Faith - Decrease			\$0
6.2.b.2 - Willfulness and/or negligence			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$5,336)
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.5 - Ability to Pay an Administrative Penalty			\$0
6.2.b.6 - Economic Benefit (flat monetary increase)	\$0		\$0
6.2.b.7 - Staff Investigative Costs (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Cost (flat monetary increase)	\$30		\$30
Penalty Adjustments			(\$5,306)
Penalty =			\$48,049

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments: No economic benefit warranted.	

Photo Attachment

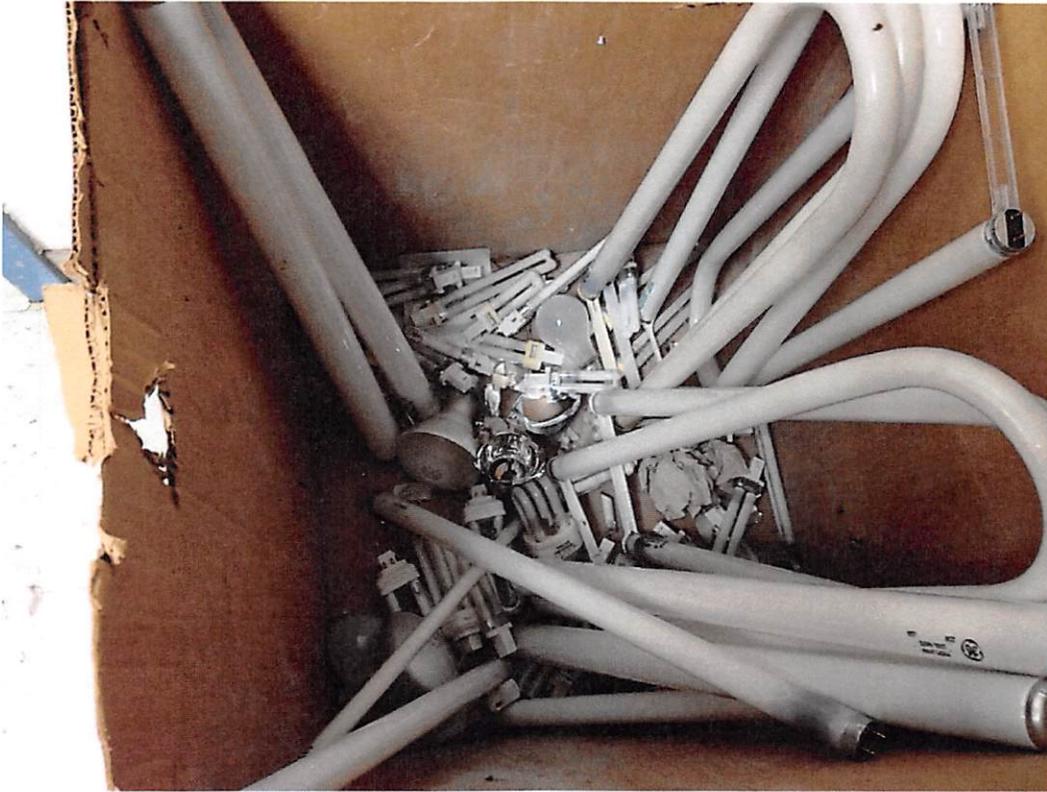


6/9/2014 - Overview of Hazardous Waste accumulation area at CAMC Memorial Hospital showing proximity of drums for staining waste from histology lab (four drums at left) to drum of incompatible staining waste from virology lab (two drums at right).



6/9/2014 - Close up of drum of incompatible staining waste from virology lab faintly marked "VIROLOGY".

Photo Attachment



6/9/2014 - Open top, unlabeled cardboard box of Universal Waste Lamps at CAMC Memorial Hospital.



6/9/2014 - Close up of broken Universal Waste lamps in open, unlabeled box at CAMC Memorial Hospital.

Photo Attachment



6/9/2014 - Satellite accumulation area for hazardous waste stain in a lab at CAMC Memorial Hospital.



6/10/2014 - Empty drum open with funnel in bung hole at CAMC Women & Children's Hospital. Drum reportedly used for hazardous waste stain from lab. Staining waste is a volatile organic that would evaporate if drum was left open.

Photo Attachment



6/10/2014 - Black box in pharmacy at CAMC Women & Children's Hospital designated for any opened and unused specially flagged medications returned to the pharmacy. Clearly labeled "RCRA Hazardous Waste" and "Satellite Accumulation". No documentation of how its contents are disposed of.