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ENVIRONMENTAL
ENFORCEMENT

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0488

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: West Virginia State College
Mr. Melvin Jones, VP Business and Finance
PO Box 1000
Institute, WV 25112

DATE: November 2, 2016

ORDER NO.: HW-16-008

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 West Virginia State College (hereinafter "WVSC").

FINDINGS OF FACT

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

1. WVSC operates a University located in Institute, Kanawha County, West Virginia and has been assigned EPA ID No. WVD988788063.
2. On October 27, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the Code of Federal Regulations were observed and documented:
 - a. 40CFR279.22(c)(1) –WVSC failed to clearly mark or label containers of used oil with the words "Used Oil."
 - b. 40CFR262.34(a)(3) as referenced by 40CFR263.34(d)(4) -WVSC failed to label containers clearly with the words "Hazardous Waste."
 - c. 40CFR265.177(c) as referenced by 40CFR262.34(d)(2) -WVSC failed to properly segregate incompatible wastes by means of a dike, berm, wall, or other device.
 - d. 40CFR273 Subpart B – WVSC failed to properly manage Universal Waste Lamps.

- e. 40CFR265.173(a) as referenced by 40CFR262.34(d)(2) – WVSC failed to properly close hazardous waste containers when not adding or removing waste.
- f. 40CFR262.11 – WVSC failed to make a hazardous waste determination.

As a result of the aforementioned violations, Notice of Violation (NOV) No. 1510-252 was issued to WVSC.

- 3. On March 8, 2016, WVDEP personnel conducted a follow-up inspection of the facility. During the inspection, violations of the following sections of the Code of Federal Regulations were observed and documented:
 - a. 40CFR273.13(d)(1) – WVSC failed to close boxes/containers of Universal Waste Lamps.
 - b. 40CFR273.14(e) – WVSC failed to label containers of spent lamps with the words “Universal Waste Lamps,” “Waste Lamps,” or “Used Lamps.”
 - c. 40CFR273.15(c) – WVSC failed to demonstrate the length of time that Universal Waste Lamps had been accumulating.
 - d. 40CFR265.173(a) as referenced by 40CFR262.34(d)(2) – WVSC failed to properly close hazardous waste containers when not adding or removing waste.
 - e. 40CFR262.11 – WVSC failed to make a hazardous waste determination.
 - f. 40CFR262.34(d) – WVSC stored hazardous waste for more than one hundred eighty (180) days.
- 4. On May 11, 2016, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the Code of Federal Regulations were observed and documented:
 - a. 40CFR262.11 – WVSC failed to make a hazardous waste determination.
 - b. 40CFR262.34(d) – WVSC stored hazardous waste in a drum for more than 180 days.

As a result of the aforementioned violations on March 8 and May 11, 2016, NOV No. 1605-260 was issued to WVSC.

- 5. On July 21, 2016, WVDEP personnel and representatives of WVSC met to discuss the terms and conditions 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. WVSC shall immediately take all measures to initiate compliance with all pertinent laws and rules.
- 2. Because of WVSC’s Code of Federal Regulations violations, WVSC shall be assessed a civil administrative penalty of fifteen thousand nine hundred thirty-three dollars (\$15,933) to be paid to the West Virginia Department of Environmental Protection for

deposit in the Hazardous Waste Management Fund in accordance with the following payment schedule:

- Payment 1 in the amount of \$2655.50 due on or before January 1, 2017.
- Payment 2 in the amount of \$2655.50 due on or before February 1, 2017.
- Payment 3 in the amount of \$2655.50 due on or before March 1, 2017.
- Payment 4 in the amount of \$2655.50 due on or before April 1, 2017.
- Payment 5 in the amount of \$2655.50 due on or before May 1, 2017.
- Payment 6 in the amount of \$2655.50 due on or before June 1, 2017.

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:**

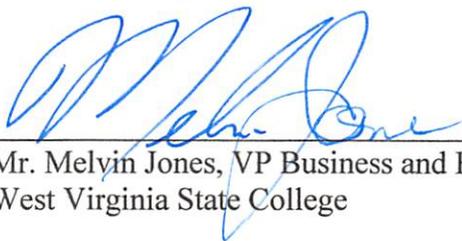
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. WVSC 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, WVSC 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, WVSC 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 WVSC 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, WVSC 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 WVSC becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and WVSC 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 WVSC 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 WVSC (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 WVSC 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 WVSC 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 WVSC, its successors and assigns.
7. This Order shall terminate upon WVSC's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


 Mr. Melvin Jones, VP Business and Finance
 West Virginia State College

11-8-16
 Date

Public Notice begin:

 Date

Public Notice end:

 Date

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

 Date

revised June 2015

James R. Buchanan 11-8-16
 Notary Public

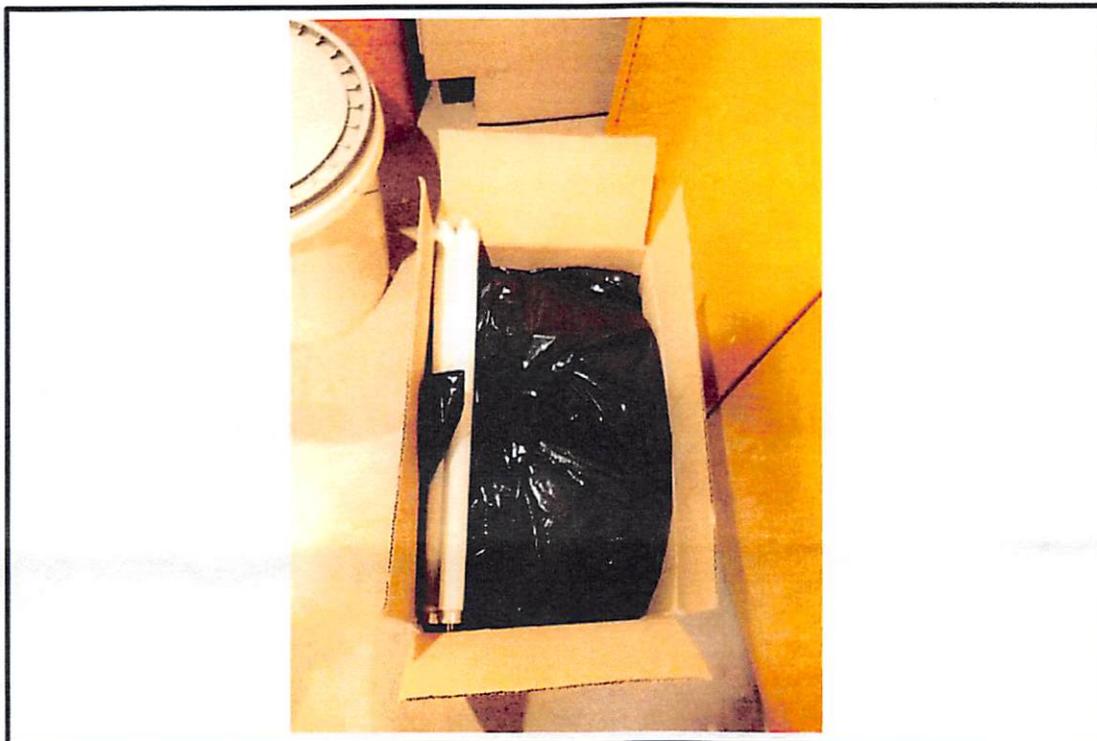


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Photo Attachment

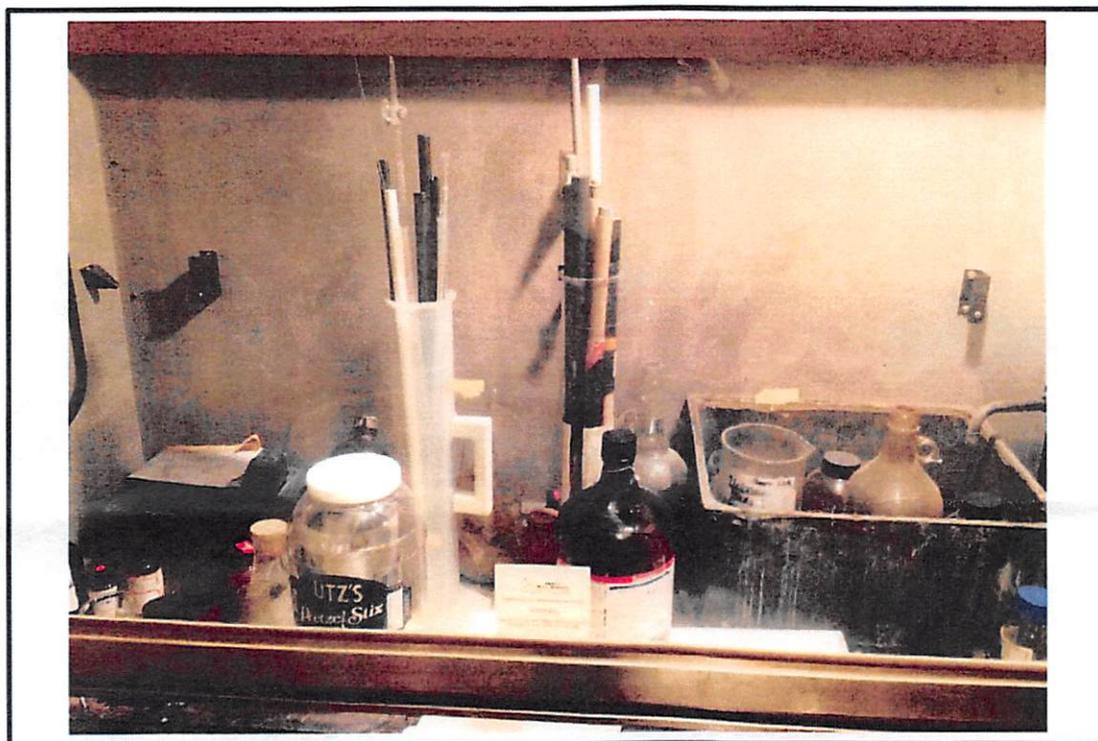


10/27/2015 - Universal Waste Lamps Improperly Managed.

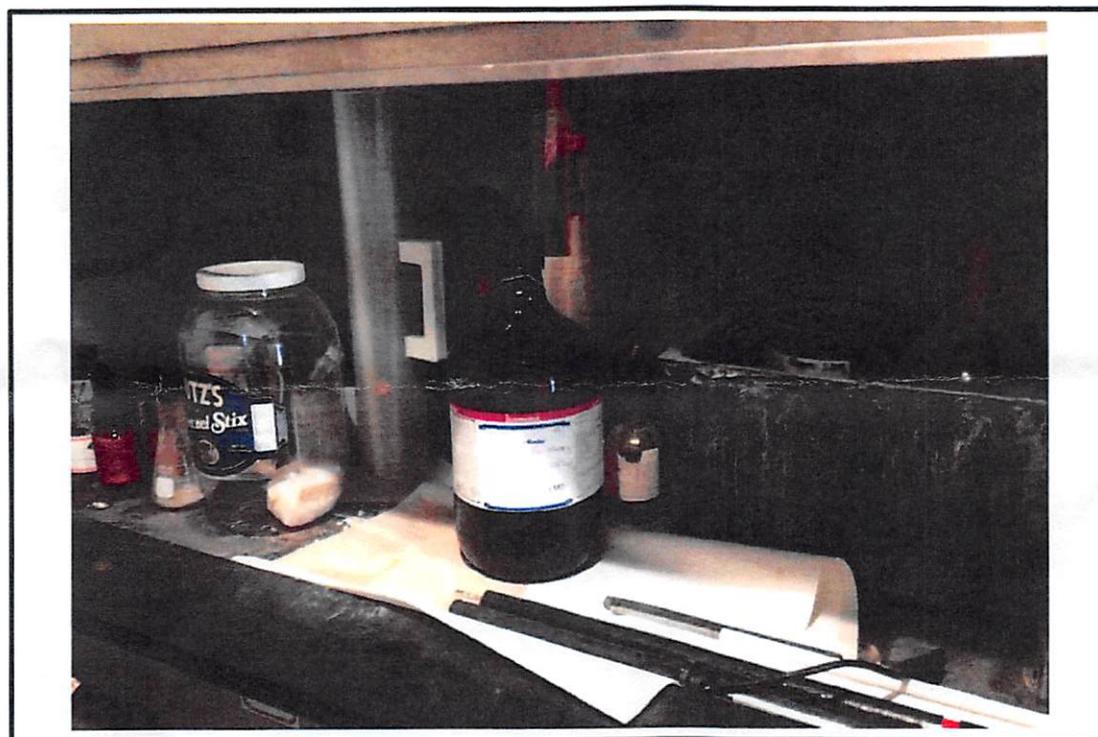


3/8/2016 – Universal Waste Lamps Improperly Managed.

Photo Attachment

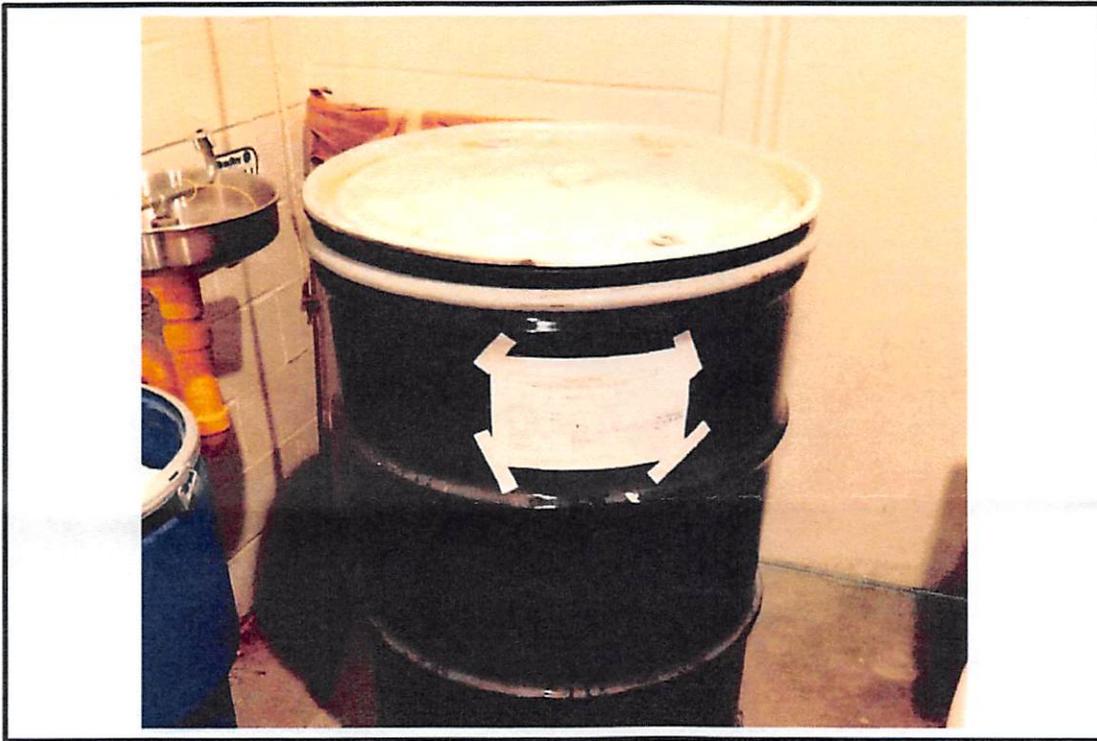


10/27/2015 – Unknown Wastes From Lab Cleanout. No Hazardous Waste Determinations.

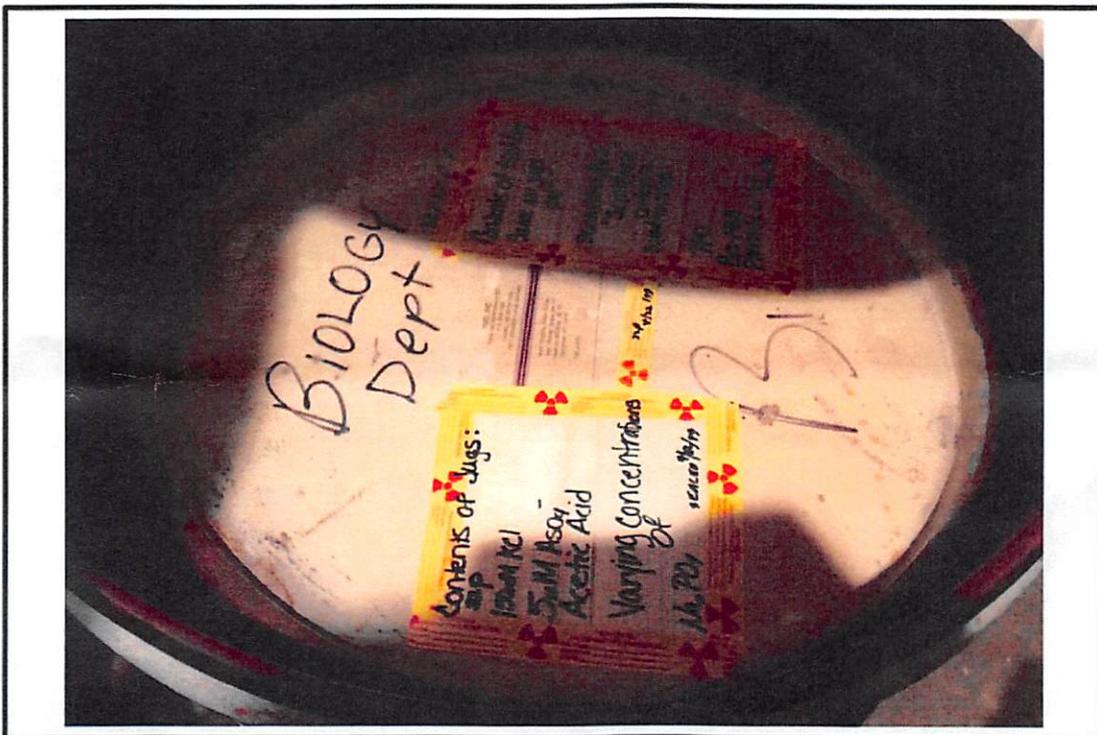


3/8/2016 – Unknown Wastes From Lab Cleanout. No Hazardous Waste Determinations.

Photo Attachment

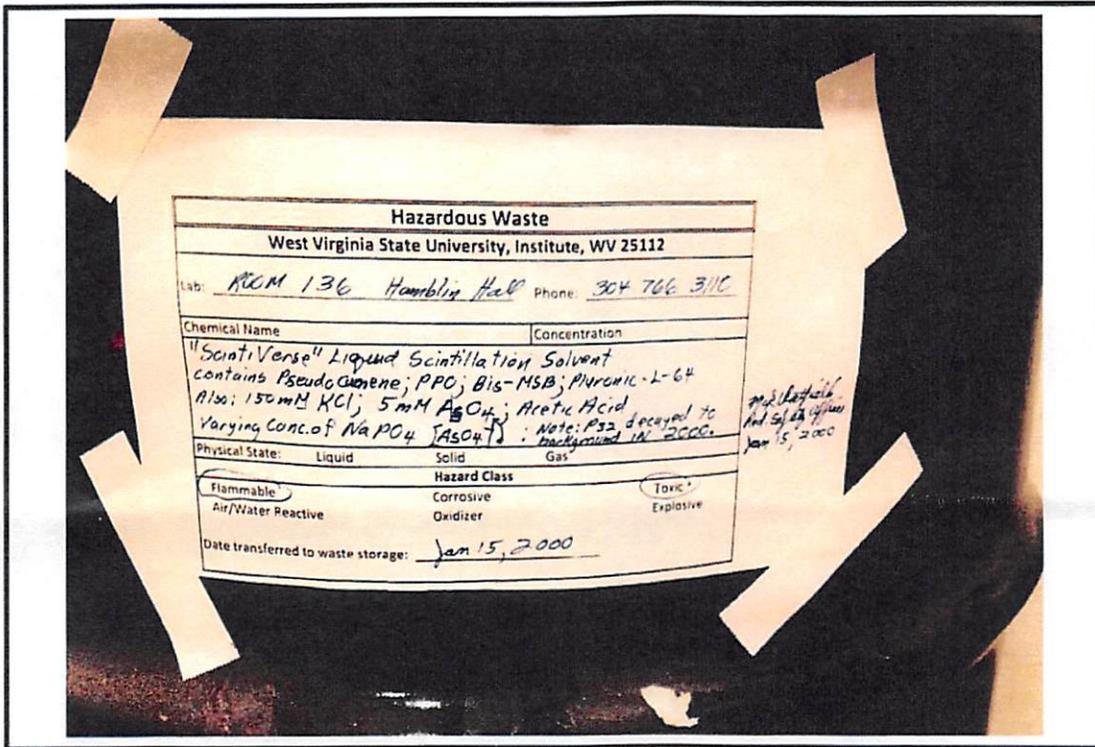


10/27/2015 – Retaining Ring not Secure on Drum. Open Container of Hazardous Waste.

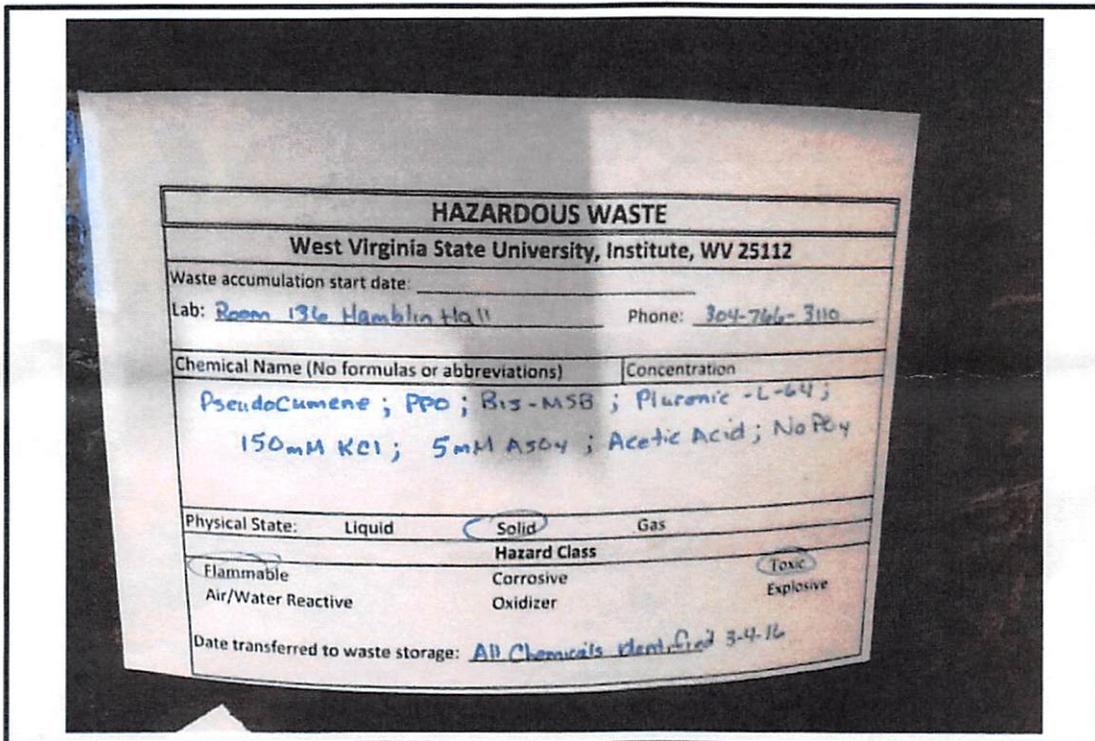


3/8/2016 – Retaining Ring not Secure on Drum. Open Container of Hazardous Waste.

Photo Attachment



10/27/2015 – Drum of Hazardous Waste Stored for More than 180 Days.



5/11/2016 – Drum of Haz. Waste Stored for More than 180 Days, Still On-Site with New Label.

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: West Virginia State College **EPA ID Number:** WVD988788063

Generator Classification: SQG

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			3d	3e, 4a	3f, 4b										
a)	Harm to RCRA Program	1 to 3	2	3	2										
b)	Probability of Exposure	0 to 3	2	1	1										
c)	Potential Seriousness of Contamination	1 to 3	1	1	1										
Average Potential for Harm Factor			1.7	1.67	1.3	No									
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	2	2										

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.

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		10	(\$1,767)
6.2.b.2 - Willfulness and/or negligence	10		\$1,767
6.2.b.3 - Cooperation with the Secretary		10	(\$1,767)
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			(\$1,737)
Penalty =			\$15,933

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: Economic benefit not warranted.	