



west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

March 13, 2014

Mr. John A. Principe III
WVU-EHS Downtown Campus East
P.O. Box 6551
Morgantown, WV 26506-6551

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7033 2801 6363

**RE: Violation of Chapter 22, Article 18
of the WV State Code**

Dear Mr. Principe:

Enclosed is revised CONSENT ORDER NUMBER HW-14-005 dated March 13, 2014. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to WVU-EHS Downtown Campus East violating Chapter 22, Article 18 of the WV State Code at its facility located in Morgantown, Monongalia County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,


Jeremy Bandy
Assistant Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Joseph Sizemore, Assistant Chief Inspector, EE/HW UST (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Jamie Fenske, Environmental Inspector Supervisor, EE/HW (via e-mail)
John Killian, Environmental Inspector, EE/HW (via e-mail)
Carol Amend, US EPA, Region III (via e-mail)

revised October 2012

Promoting a healthy environment.



west virginia department of environmental protection

Division of Water and Waste Management
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**CONSENT ORDER
ISSUED UNDER THE
HAZARDOUS WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18**

TO: WVU-EHS Downtown Campus East
Mr. John A. Principe III, Director
P.O. Box 6551
Morgantown, WV 26506

DATE: March 13, 2014
ORDER NO.: HW-14-005

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 WVU-EHS Downtown Campus East (hereinafter "WVU").

FINDINGS OF FACT

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

1. WVU operates an academic university located in Morgantown, Monongalia County, West Virginia and has been assigned EPA ID No. WVD980720999.
2. On April 20, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, the following violations of the Code of Federal Regulations and WV Legislative Rules were observed and documented:
 - a. 40CFR262.34(c)(1)(ii) – The facility failed to label a container of hazardous waste with the words, "Hazardous Waste," or with other words that identify the contents.
 - b. 40CFR265.173(a) as referenced by 40CFR262.34(c)(1)(i) – The facility failed to keep containers of hazardous waste closed at all times except when adding or removing wastes.
 - c. 40CFR265.171 as referenced by 40CFR262.34(c)(1)(i) – The facility stored hazardous waste in leaking containers.

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- d. 33CSR20 Section 4 – The facility failed to file notification as a Large Quantity Generator.
- e. 40CFR265.16 as referenced by 40CFR262.34(a)(4) – The facility failed to provide training to employees with hazardous waste management duties.
- f. 40CFR265.51 as referenced by 40CFR262.34(a)(4) – The facility failed to have a contingency plan in place.
- g. 40CFR262.11 – The facility failed to make waste determinations on multiple containers of waste, unwanted and obsolete chemicals.
- h. 40CFR262.41 – The facility failed to file a hazardous waste biennial report in 2010 for wastes generated in 2009.
- i. 40CFR270(c) as referenced by 40CFR262.34(b) – The facility stored hazardous waste for greater than ninety (90) days without a permit.

As a result of the aforementioned violations, on June 8, 2011, a Notice of Violation (NOV) was issued to WVU.

3. On August 29, 2011, Civil Administrative Penalty (CAP) Case No. 120008 was issued by WVDEP to WVU to address the aforementioned violations. WVDEP personnel determined that the violations were subsequently corrected.
4. On June 7, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of the Code of Federal Regulations were observed and documented:
 - a. 40CFR265.173(a) as referenced by 40CFR262.34(c)(1)(i) – The facility failed to keep containers of hazardous waste closed at all times except when adding or removing wastes.
 - b. 40CFR262.34(c)(1)(ii) – The facility failed to label a container of hazardous waste with the words, “Hazardous Waste,” or with other words that identify the contents.
 - c. 40CFR265.174 – The facility failed to perform weekly inspections of hazardous waste container storage areas.

As a result of the aforementioned violations, on June 25, 2012, an NOV was issued to WVU. WVDEP personnel determined that the violations were subsequently corrected.

5. On September 17, 2013, 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. 40CFR262.34(a)(2) – The facility failed to mark the date of accumulation on a container of hazardous waste.
 - b. 40CFR265.33 – The facility failed to test and maintain fire protection equipment to assure proper operation in case of emergency.
 - c. 40CFR262.11 – The facility failed to perform multiple waste determinations.
 - d. 40CFR265.173(a) as referenced by 40CFR262.34(c)(1)(i) – The facility failed to keep containers of hazardous waste closed at all times except when adding or removing wastes.

- e. 40CFR265.16(c) – Facility personnel failed to take part in an annual review of RCRA hazardous waste training.

As a result of the aforementioned violations, on October 10, 2013, an NOV was issued to WVU. WVU provided a written response to the NOV on November 12, 2013.

6. On February 12, 2014, WVDEP personnel and representatives of WVU 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. WVU shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, WVU shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when WVU will maintain compliance with all pertinent laws and rules. The plan of corrective action shall make reference to EPA ID No. WVD980720999 and Order No. HW-14-005. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

A copy of this plan shall be submitted to:

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

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of WVU's Code of Federal Regulations violations, WVU shall be assessed a civil administrative penalty of thirty-three thousand three hundred eighty dollars (\$33,380) 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. WVU 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, WVU 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, WVU 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 WVU 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, WVU 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 WVU becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and WVU 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 WVU 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 WVU (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 WVU 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 WVU 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 WVU, its successors and assigns.
7. This Order shall terminate upon WVU's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Mr. John A. Principe III
Director, Environmental Health & Safety
WVU-EHS Downtown Campus East

03/24/2014

Date

Public Notice begin:

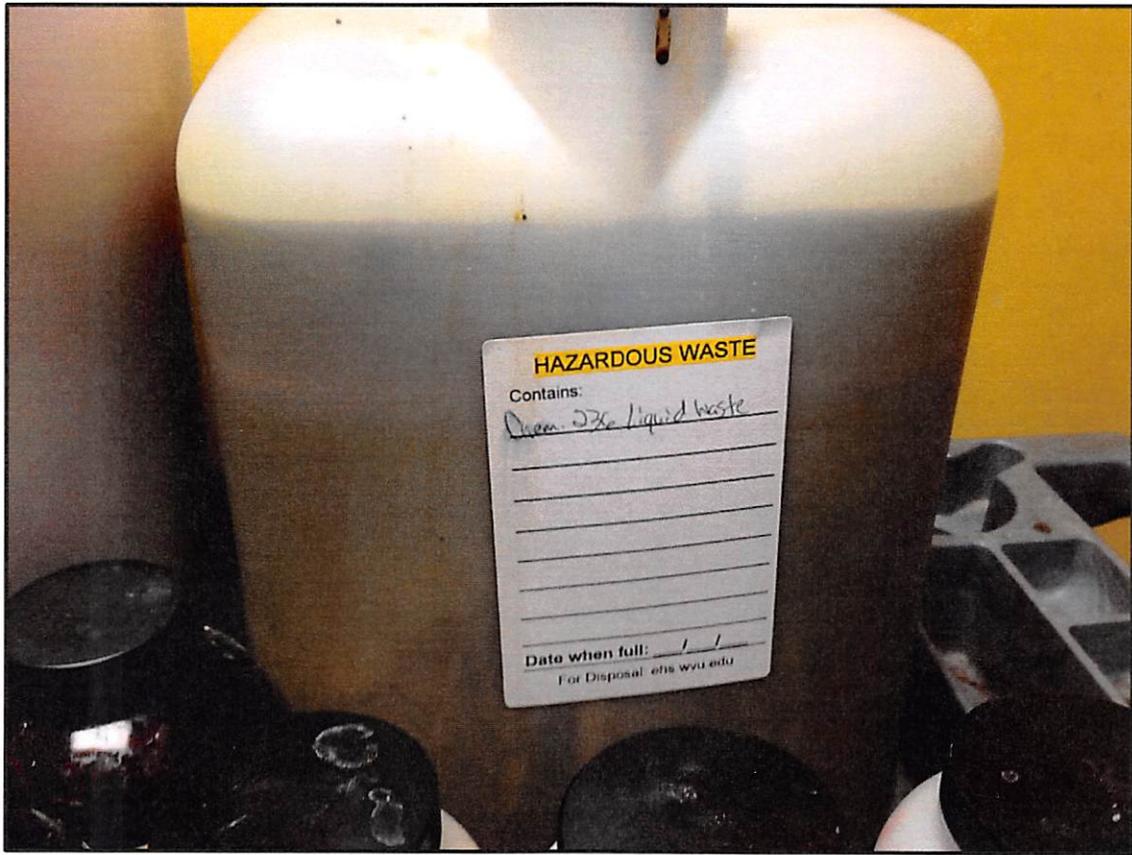
Date

Public Notice end:

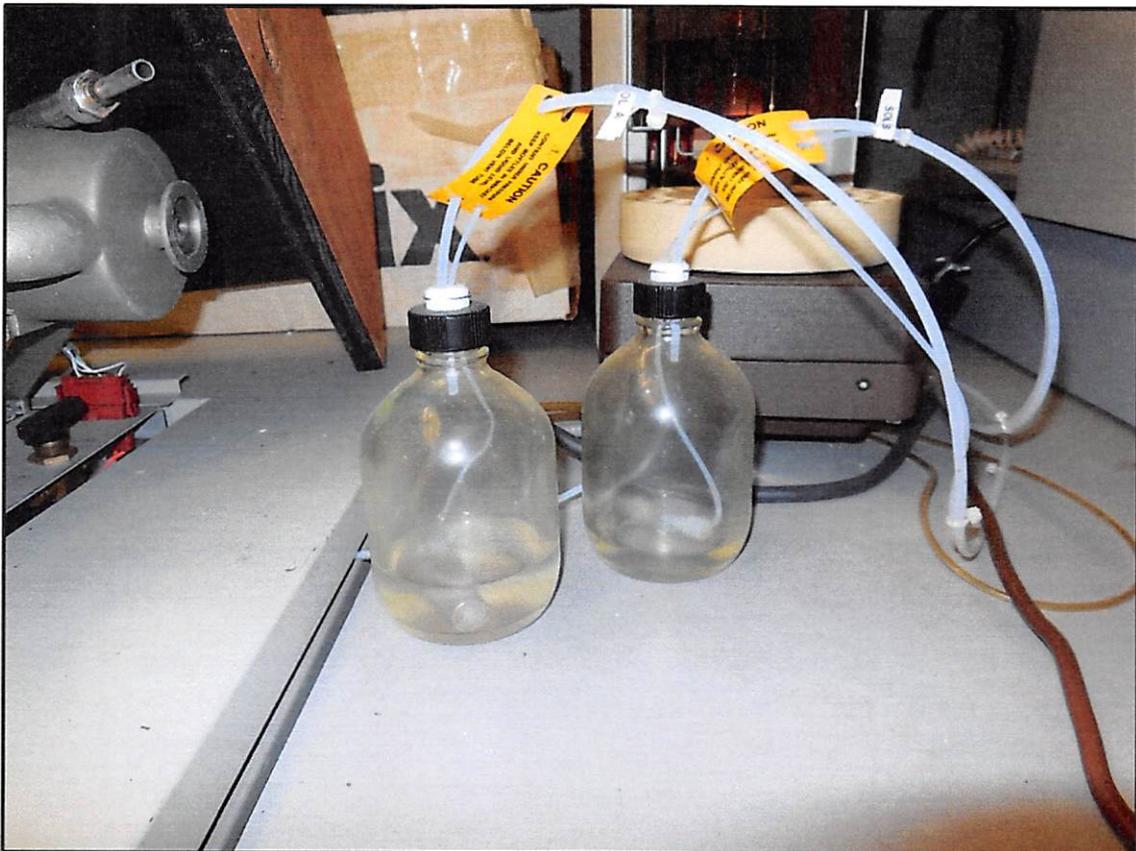
Date

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

Date



September 17, 2013 – Container not marked with accumulation start date (Rm. 402A)



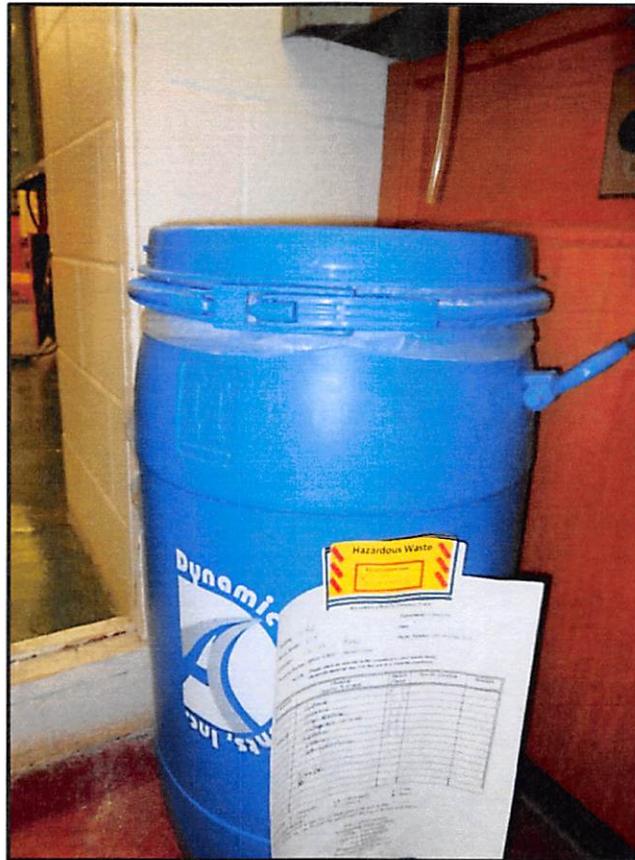
September 17, 2013 - Unknown clear liquids connected to auto sampler, no waste determination (Rm. 563)



September 17, 2013 - "Sterilite" totes on cart with sign "Ready for Disposal," no waste determination (Rm. 452)



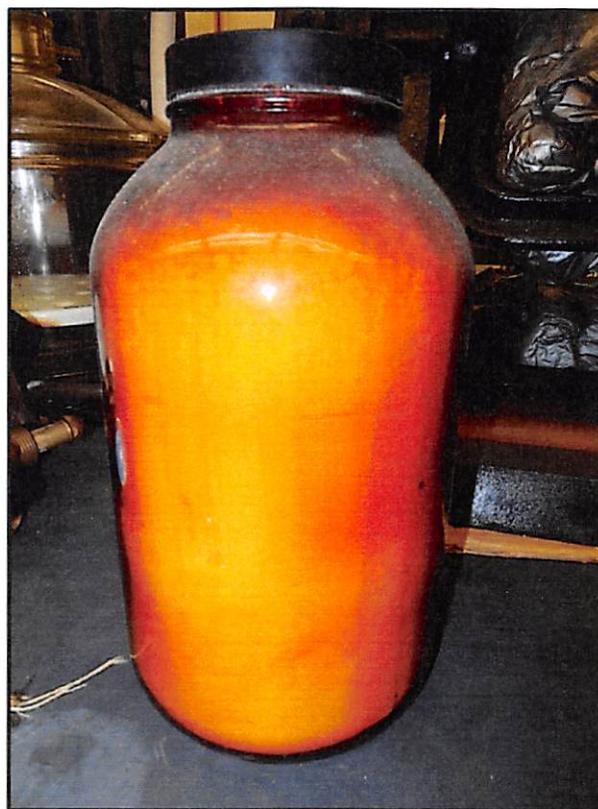
September 17, 2013 - Open hazardous waste container, lid not screwed on (Rm. 453)



September 17, 2013 - Open hazardous waste container, lid locking ring not secured (Rm. 451)



September 17, 2013 - Broken glassware w/ unknown spilled chemicals, no waste determination (Rm. 451)



September 17, 2013 - Unknown material, no label (Rm. 558)



September 17, 2013 - Unknown solid in flask (Rm. 453)

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: WVU-EHS Downtown
Campus East EPA ID Number: WVD980720999

Generator Classification: LQG

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

1)	Potential for Harm Factor	Factor Range	FOF#													
			5a.	5b.	5c.	5d.	5e.									
a)	Harm to RCRA Program	1 to 3	1	1	2	1	1									
b)	Probability of Exposure	0 to 3	1	1	3	2	3									
c)	Potential Seriousness of Contamination	1 to 3	2	2	3	3	2									
Average Potential for Harm Factor			1.3	1.3	2.7	2	2	No								
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	3	3	1	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.

		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
5a.	Moderate	Minor	\$2,330	1	\$2,330
5b.	Moderate	Major	\$4,330	1	\$4,330
5c.	Major	Major	\$9,340	1	\$9,340
5d.	Moderate	Minor	\$3,000	1	\$3,000
5e.	Moderate	Moderate	\$4,000	1	\$4,000
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
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
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					\$23,000

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	20		\$4,600
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.4 - Compliance/noncompliance history	25		\$5,750
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			\$10,380
Penalty =			\$33,380

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:	