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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: WVU-EHS Engineering/Evansdale  
John Principe, Director of Env. Health and Safety  
PO Box 6551  
Morgantown, WV 26506

DATE: November 5, 2014  
ORDER NO.: HW-15-006

**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 Engineering/Evansdale (hereinafter “WVU Engineering”).

**FINDINGS OF FACT**

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

1. WVU Engineering operates a teaching facility located in Morgantown, Monongalia County, West Virginia, and has been assigned EPA ID No. WVD980720874.
2. On August 26, 2014, 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. 40CFR262.11-WVU Engineering failed to perform a hazardous waste determination.
  - b. 40CFR265.173(a)-WVU Engineering failed to keep a container of hazardous waste closed.
  - c. 40CFR262.34(a)(3)-WVU Engineering failed to properly label a container of hazardous waste.

- d. 40CFR273.14(a)-WVU Engineering failed to properly label Universal Waste Batteries.
- e. 40CFR273.13(a)(1) - WVU Engineering failed to close a container holding Universal Waste Batteries.
- f. 40CFR279.22(d) - WVU Engineering failed to properly respond to a release of Used Oil.
- g. 40CFR265.172 - WVU Engineering failed to use a container compatible with the waste stored inside.

As a result of the aforementioned violations, a Notice of Violation (NOV) was issued to WVU Engineering.

### **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 Engineering shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within fifteen (15) days of the effective date of this Order, WVU Engineering shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when WVU Engineering will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to EPA ID No. WVD980720874 and Order No. HW-15-006. 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 57<sup>th</sup> 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 Engineering's Code of Federal Regulations violations, WVU Engineering shall be assessed a civil administrative penalty of twenty-four thousand

seven hundred sixty-nine dollars (\$24,769) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

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

  
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John Principe, Director of Env. Health and Safety  
WVU-EHS Engineering/Evansdale

01/22/2015  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

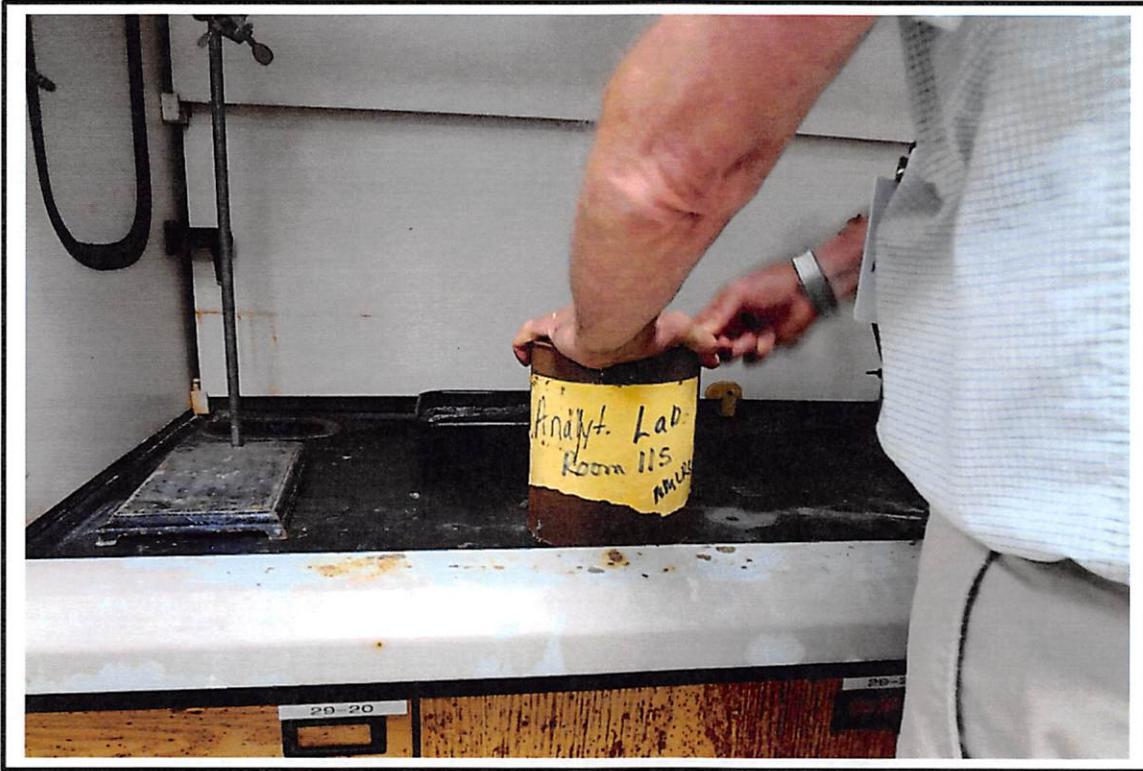
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Date

*revised June 2013*

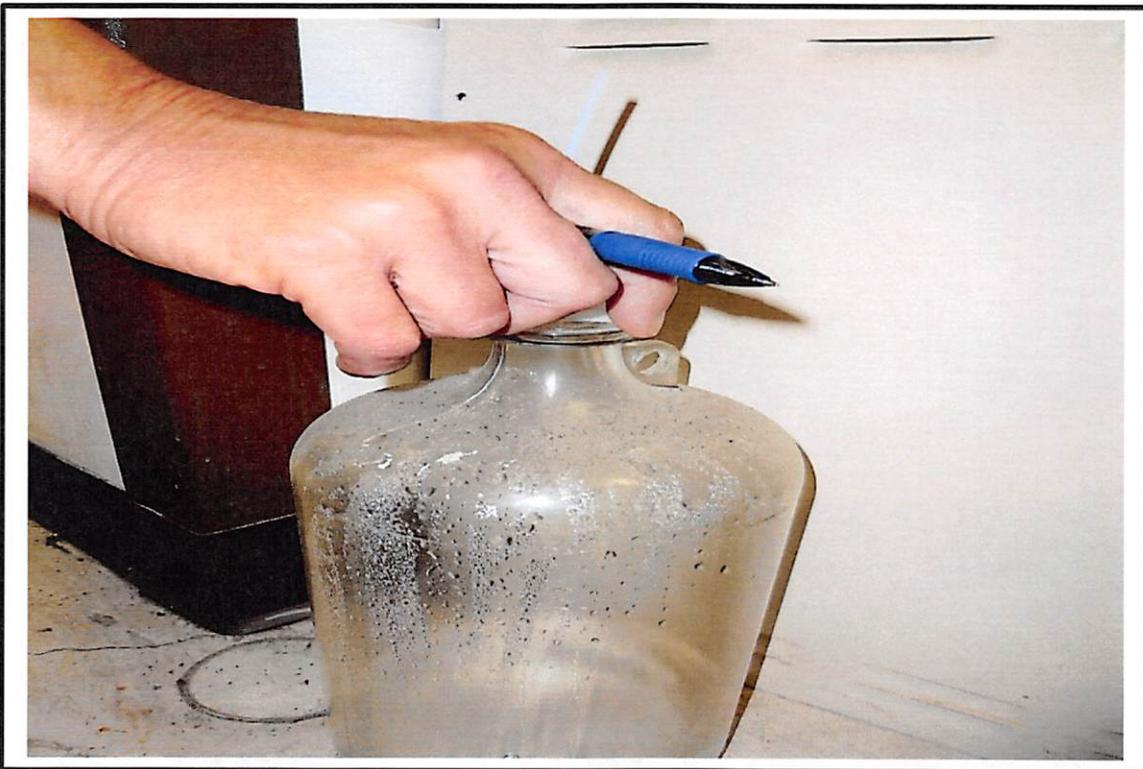
**RECEIVED**

JAN 23 2015

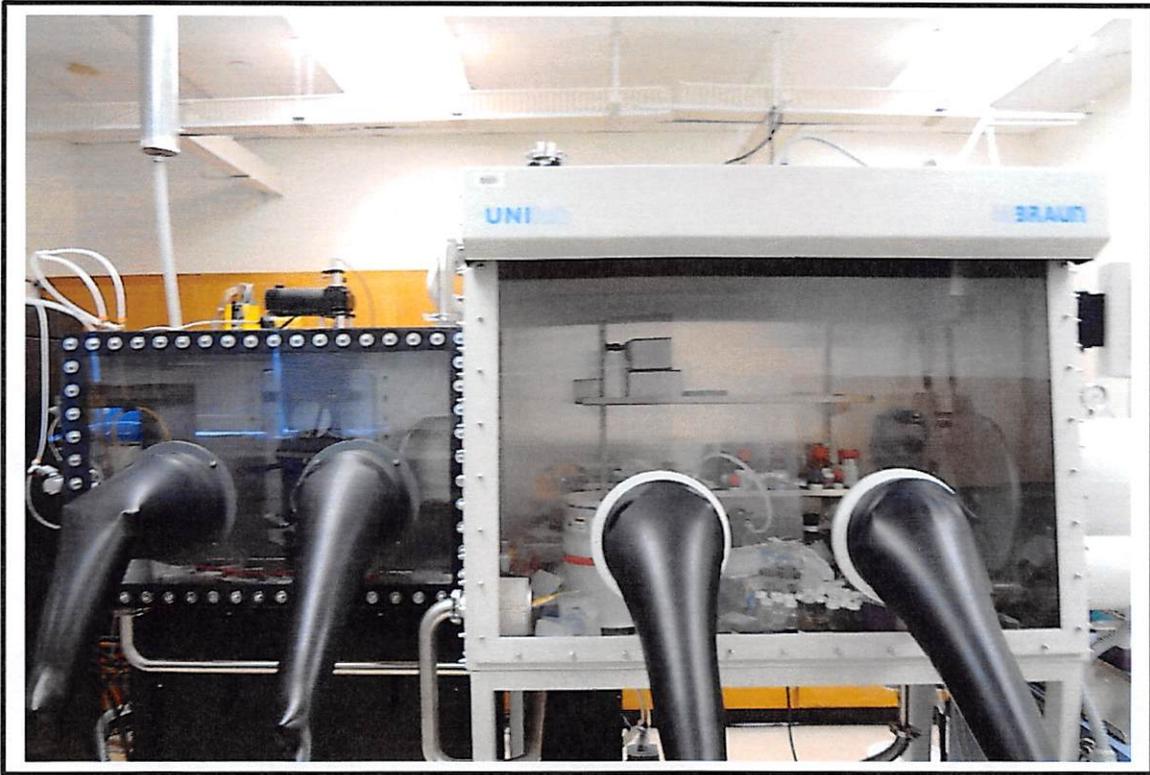
**ENVIRONMENTAL  
ENFORCEMENT**



8/26/2014 – Unknown coal/rock sample in rusted metal paint can.



8/26/2014 – Unknown liquid in glass jug.



8/26/2014 – Overview of Room 305 Micro/Nanosystem Fabrication Lab hoods



8/26/2014 – Close-up of hood area with cadmium, chromium, zinc, selenium, and chloroform containing waste



8/26/2014 – Room 305A close up view of hood area.



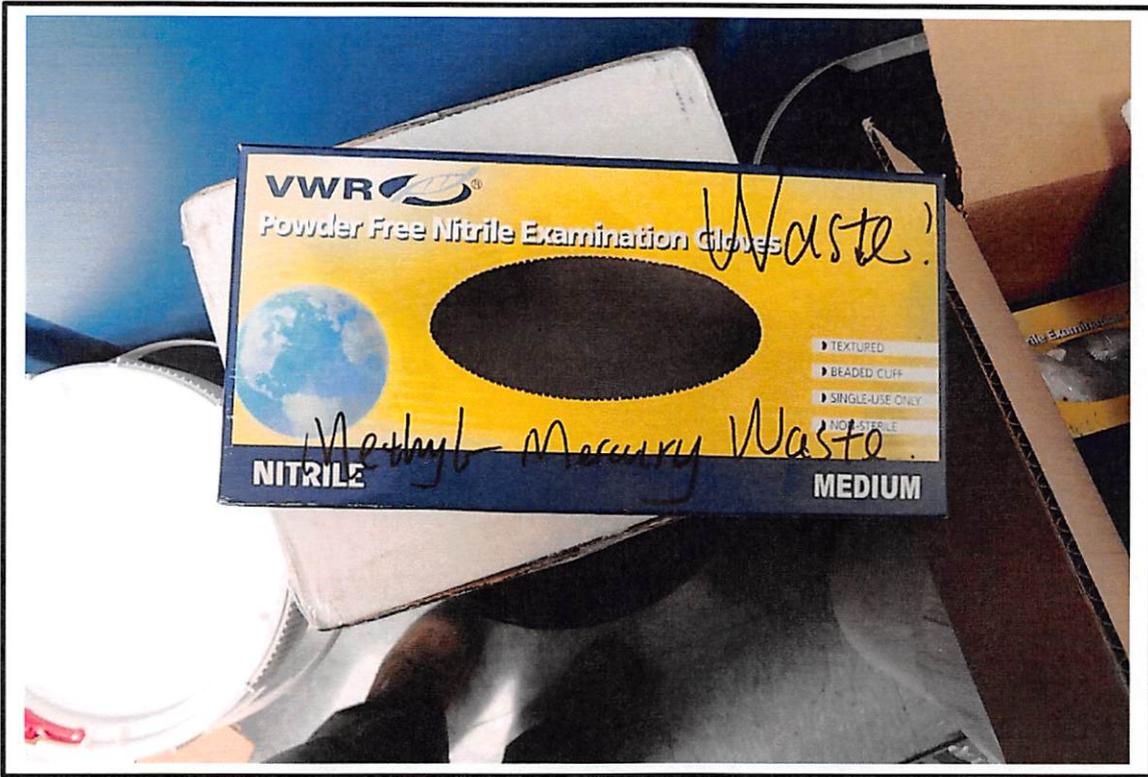
8/26/2014 – Room 119 Universal Waste Batteries located inside a sink



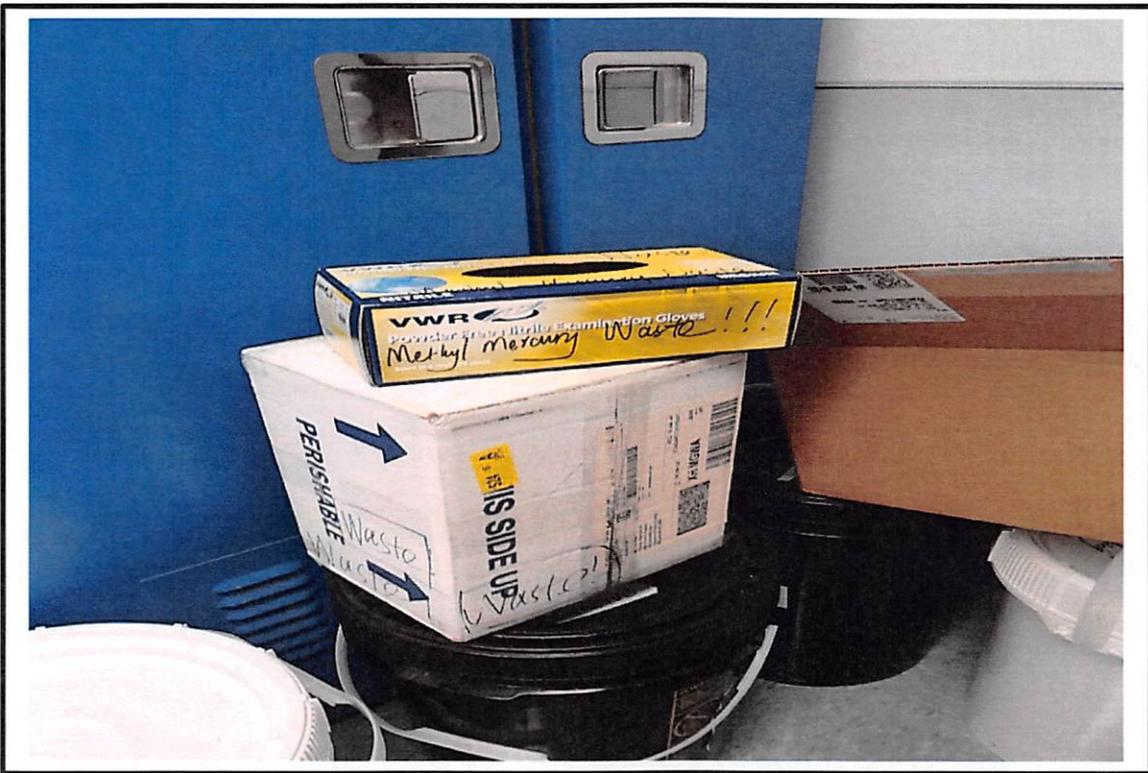
8/26/2014 – Used Oil spillage onto floor in room G15 of Engineering Science Building



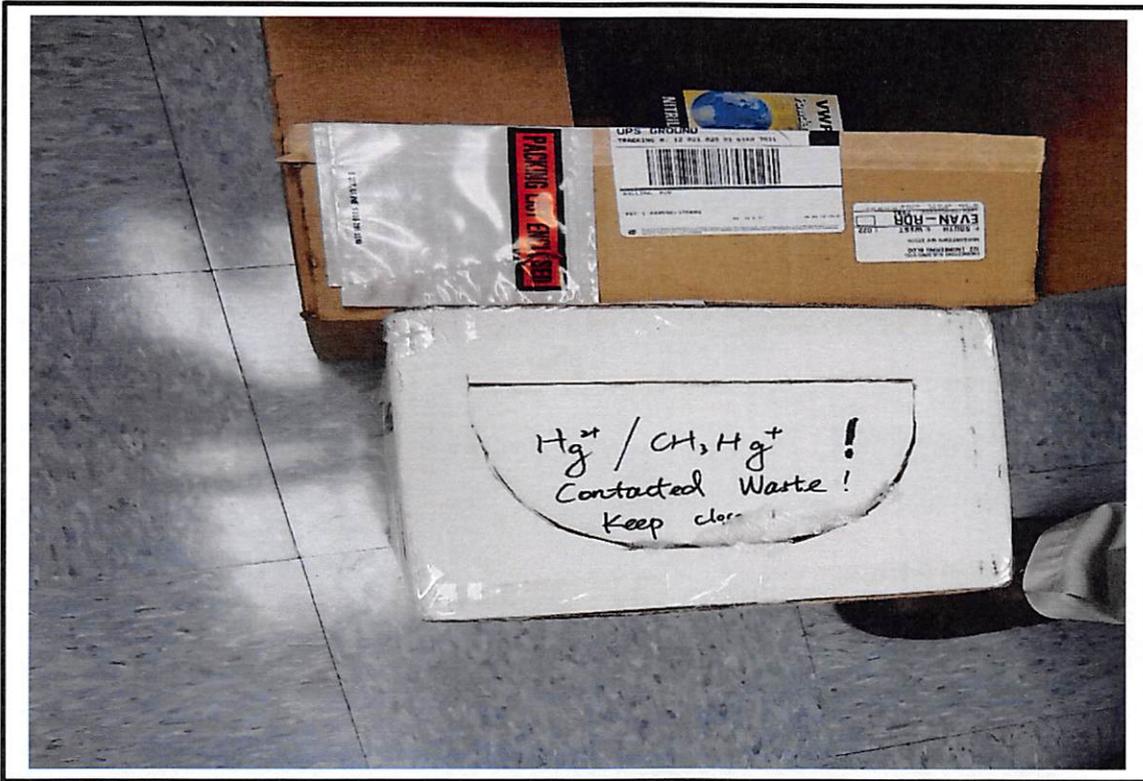
8/26/2014 – Overview of Room B33 Biosensor Lab showing Methyl Mercury contaminated waste



8/26/2014 – Close up of Methyl Mercury contaminated waste



8/26/2014 – Close up of Methyl Mercury contaminated waste



8/26/2014 – Close up of Methyl Mercury contaminated waste

## Hazardous Waste Base Penalty Calculation (pursuant to 33CSR27-6.1)

WVU-EHS  
**Responsible Party:** Engineering/Evansdale      **EPA ID Number:** WVD980720874

**Generator Classification:**      LQG

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a	2b	2c	2g									
a)	Harm to RCRA Program	1 to 3	2	2	2	3									
b)	Probability of Exposure	0 to 3	1	2	2	2									
c)	Potential Seriousness of Contamination	1 to 3	1	2	2	3									
<b>Average Potential for Harm Factor</b>			1.3	2	2	2.7	No								
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	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		\$0
6.2.b.1 - Good Faith - Decrease		0	\$0
6.2.b.2 - Willfulness and/or negligence	15		\$2,651
6.2.b.3 - Cooperation with the Secretary		0	\$0
6.2.b.4 - Compliance/noncompliance history	25		\$4,418
6.2.b.5 - Ability to Pay an Administrative Penalty		0	\$0
6.2.b.6 - Economic Benefit (flat monetary increase)	\$0		\$0
6.2.b.7 - Staff Investigative Costs (flat monetary increase)	\$0		\$0
6.2.b.8 - Additional Other Factors - Increase (flat monetary increase)	\$0		\$0
6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease)		\$0	\$0
Public Notice Cost (flat monetary increase)	\$30		\$30
<b>Penalty Adjustments</b>			<b>\$7,099</b>
<b>Penalty =</b>			<b>\$24,769</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b>	