COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WAKO CHEMICALS USA, INC.
EPA ID No. VAD988170445

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Wako Chemicals USA, Inc., for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" or "Site" means the Wako Facility located at 1600 Bellwood Road in Richmond, Virginia.

6. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

8. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

10. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

12. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

14. "Va. Code" means the Code of Virginia (1950), as amended.

15. "VAC" means the Virginia Administrative Code.

16. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

17. "Wako" means Wako Chemicals USA, Inc., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Wako is a "person" within the meaning of Va. Code § 10.1-1400.

SECTION C: Findings of Fact and Conclusions of Law

1. Wako Chemicals USA, Inc. (Wako) owns and operates a specialty chemical manufacturing plant in Richmond Virginia that produces a number of specialty chemicals such as 2,2'-azobis(2-amidinopropane) dihydrochloride, an azo initiator used in radical polymerization, one application of which is the production of polyacrylic acid, a superabsorbent polymer. The Facility is located at 1600 Bellwood Road in Richmond, Virginia. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Wako submitted an updated RCRA Subtitle C Site Identification Form that gave notice of regulated waste activity at the Facility as a LQG of hazardous waste. Wako inherited EPA ID No. VAD988170445 for the Facility.

3. At the Facility, Wako generates a number of solid waste types that are hazardous at this facility including: Waste Flammable Solids, Organic (D001, F002, F005), Waste Solids Containing Flammable Liquids (D001, F002, F003, F005), Waste Combustable Liquid (Petroleum Naptha D039), Waste Flammable Liquid, Corrosive (Acetamide, BIS Trimethylsilyl D001, D002), Waste Toxic Liquids, Organic (Dibromomethane, Nicotine Tartarate U068, P057), Hazardous Waste Solid (Carbon D001, F003, F005), Corrosive Liquid, Acidic, Organic (Anionic Surfactant, Picric Acid), Waste Flammable Solids, Toxic, Organic (Hexane, Endrin D001, D012, D020, D031, F003, F005) The numbers in parenthesis are the hazardous waste codes as described in 40 CFR §261 Subpart C & D. This hazardous waste is accumulated in containers at the Facility after its generation.

4. On July 19, 2012, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

   a. Crude silver chloride waste (~1,540 grams) has been collected over 8 years in the quality control (QC) lab without being recycled.

      40 CFR §261.1(c)(8) states that "A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that—during the calendar year (commencing on January 1)—the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (*i.e.,* from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under § 261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however."

   b. Manifest 7564026JJK was missing all hazardous waste codes for 10 pounds of corrosive liquid, acidic, organic (anionic Surfactant, picric acid). Manifest 2655743JJK was missing one out of three waste codes for 7,000 pounds of hazardous waste, (solid carbon F003, F005, D001). [40 CFR §262 Appendix Item 13]

      Federal regulations require generators of hazardous waste to complete form 8700-22. 40 CFR §262 Appendix Item 13 instructs the generator to "Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that

are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

c. Several wastes generated on site were not properly characterized for a hazardous waste determination including: aerosol cans, "dirty absorbent" (corn-cob based), used rags/wipes, used oil filters, QC lab filtered silver chloride waste/titration cups. The 9/29/11 LDR notification for "Hazardous Waste, Solid (F003, F005) associated with manifest 2655743JJK erroneously indicates that this "Restricted waste can be land disposed without further treatment."

   40 CFR §262.11 states that "A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste..."

d. Manifest 7994671JJK was missing its corresponding LDR notification.

   40 CFR §268.7(a)(2) states that "If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.") No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file."

e. A copy of the contingency plan was not submitted to State emergency response teams.

   40 CFR §265.53 states that "A copy of the contingency plan and all revisions to the plan must be:...(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services."

f. Failure to arrange agreements and familiarize the local police and fire department with the facility layout and associated hazards.

   40 CFR §265.37(a)(3) states that "The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:...(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers."

5. On October 16, 2012, the Department issued NOV No. 2012-10-PRO-603 for the violations observed during the July 19, 2012 inspection.

6. On November 8, 2012, Department staff met with representatives of Wako to discuss the violations. Wako admitted that silver chloride was accumulated for over 8 years in the QC lab from routine analytical activity and was not recycled. Wako admitted that a copy of the contingency plan was not submitted to State emergency response teams and that they failed to arrange agreements and familiarize the local police and fire department with the facility layout and associated hazards. On November 14, 2012, Wako provided documentation that the plan was provided to Chesterfield County Emergency Management, as well as the local fire and police departments. In addition, Wako placed detailed information at the facility entrance and recently participated in on site spill drills with Chesterfield County Emergency Management.

7. On November 14, 2012, Wako submitted a letter to the Department responding to the NOV and the November 8, 2012 meeting. After receiving the October 16, 2012 NOV, Wako hired a consultant, to remove the silver chloride and recycle the silver from the material. Wako provided documentation at the meeting corroborating the silver recovery. Wako stated that usually the picric acid waste is considered hazardous, but the waste from manifest 7564026JJK was part of a shipment of expired product packaged by a third party. Wako provided documentation from the third party that the concentration of picric acid was 0.5% resulting in a pH of 2.8 and the other 99.5% was comprised of a non hazardous liquid anionic surfactant. Since the waste was non-hazardous it did not require an LDR, however Wako did agree that a waste code for spent carbon was left off manifest 2655743JJK. Wako submitted a draft standard operating procedure for the handling of the wastes mentioned to the Department for review,. Wako provided written documentation of the carbon regeneration. In addition, Wako provided documentation that the contingency plan was submitted to a number of county emergency service providers.

8. Based on the results of the July 19, 2012, inspection, the November 8, 2012, meeting, and documentation provided by Wako on November 14, 2012, the Board concludes that Wako has violated 40 CFR §261.1(c)(8), 40 CFR §262 Appendix Item 13, 40 CFR §262.11, 40 CFR §268.7(a)(2), 40 CFR §265.53, and 40 CFR §265.37(a)(3) of the VHWMR and the Virginia Waste Management Act, as described in paragraph C(4) above.

9. In order for Wako to return to compliance, DEQ staff and representatives of Wako have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Wako, and Wako agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $12,300 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Wako shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Wako for good cause shown by Wako, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Wako admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein

4. Wako consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Wako declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Wako to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Wako shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Wako shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wako shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Wako intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Wako.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Wako has completed all of the requirements of the Order;

    b. Wako petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Wako.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wako from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Wako and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Wako certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Wako to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Wako.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Wako voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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Wako Chemicals USA, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/21/2013 By: David Alwood, Vice President
(Person) (Title)
Wako Chemicals USA, Inc.

Commonwealth of Virginia
City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 21st. day of March, 2013, by David Alwood who is Vice President of Wako Chemicals USA, Inc., on behalf of the corporation.

Virginia M. Steffen (I was commissioned notary as Virginia M. Hasse)
Notary Public

Virginia M. Hasse
Commonwealth of Virginia
Notary Public
Commission No. 7388144
My Commission Expires 10/31/2015

7388144
Registration No.

My commission expires: 10/31/2015

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Waste Characterization

On or before April 15, 2013, Wako shall characterize all solid waste streams at the Facility in accordance with 40 C.F.R. § 262.11. By April 30, 2013, Wako shall provide documentation of the characterization and certify, in writing, to the Department that all solid waste streams at the Facility were properly characterized in accordance with 40 C.F.R. § 262.11.

If the waste characterization plan submitted by Wako is found by Department to be inaccurate or deficient, Wako shall respond and correct any inaccuracies or deficiencies noted in the plan within 10 days of receiving the notice of the inaccuracy or deficiency.

2. Records

On or before April 15, 2013, Wako shall submit to the Department for review and approval a standard operating procedure to ensure that manifests are properly completed.

3. Contingency Plan

On or before May 1, 2013, Wako shall submit a copy of the contingency plan for the Facility to the Virginia Department of Emergency Management. Wako shall certify in writing that a copy of the contingency plan has been provided to the necessary parties under 40 C.F.R. § 265.53 and that the contingency plan will be implemented, as needed, in accordance with 40 C.F.R. § 265 Subpart D.

Wako must also attempt to make arrangement with local authorities, and the Virginia Department of Emergency Management in accordance with 40 C.F.R. § 265.37(a)(3).

4. Contact

Unless otherwise specified in this Order, Wako shall submit all requirements of Appendix A of this Order to:

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov