



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

*Transmitted via express mail and electronic mail*

Brian L. Buniva  
Dennis M. Ryan  
LeClairRyan  
Federal Reserve Bank Building  
Post Office Box 2399  
Richmond Virginia 23219

*December 16, 2008*

**Re: Settlement - WAKO Chemicals USA, Inc.**

Dear Messrs. Buniva and Ryan:

Enclosed please find the Consent Agreement settling the alleged violations of the Resource Conservation and Recovery Act ("RCRA"), Subtitle C, 42 U.S.C. §§6921-6939e, the regulations thereunder at 40 C.F.R. Parts 260-271, and the Virginia Hazardous Waste Management Regulations at WAKO Chemicals USA, Inc.'s Facility located at 1600 Bellwood Road, Richmond, Virginia. This matter has been signed and filed with the Regional Hearing Clerk. If you have any questions please contact me at (215) 814-2478. Thank you again for your patience regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney T. Carter".

Rodney T. Carter  
Senior Assistant Regional Counsel

cc: Jan Szaro (3LC70)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

**SUBJECT:** In the Matter of:  
WAKO Chemicals USA Inc. RCRA-3-2009-0013

**DATE:** 12/3/08

**FROM:** Abraham Ferdas (3WC00) *Abraham Ferdas*  
Director, Land and Chemicals Division

William C. Early (3RC00)  
Regional Counsel *William C. Early*

**TO:** Renée Sarajian (3RC00)  
Regional Judicial Officer

**ENFORCEMENT CONFIDENTIAL/ATTORNEY WORK PRODUCT**  
**DO NOT RELEASE UNDER FOIA**

We recommend that you sign the Final Order associated with the Consent Agreement which has been negotiated in settlement of the above captioned matter. Respondent, WAKO Chemicals USA Inc. ("Respondent" or "WAKO"), is the owner and operator of a facility located at 1600 Bellwood Road, Richmond, Virginia (the "Facility"). The CA/FO alleges violations of RCRA Subtitle C, 42 U.S.C. § 6921- 6939e, and the Commonwealth of Virginia's ("Virginia" or "Commonwealth") Hazardous Waste Management Regulations authorized by the U. S. Environmental Protection Agency, Region III ("EPA") pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). The CA/FO will be filed pursuant to Sections 3008(a)(1) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928(a)(1) and (g) and the Consolidated Rules of Practice at 40 C.F.R. § 22.13(b) and .18(b)(2) and (3). Respondent has agreed to pay a monetary civil penalty in the amount of Thirty Eight Thousand, Four Hundred and Ten Dollars (\$38,410.00) . The proposed civil penalty has been determined in accordance with Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. § 6928(a)(3) and (g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19. In developing the proposed penalty, EPA took into account the particular facts and circumstances of the case with specific reference to EPA's October 1990 "RCRA Civil Penalty Policy" ("RCRA Penalty Policy").

We concur with the terms of the enclosed CA/FO that requires Respondent to pay a total of Thirty Eight Thousand, Four Hundred and Ten Dollars (\$38,410.00) for the violations regarding the Facility. Please sign the Final Order where indicated and return it and the attached documents to the Office of Regional Counsel for filing with the Regional Hearing Clerk.

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, PA 19103-2029

RECEIVED  
 2009 APR 16 PM 6:07

IN THE MATTER OF:

**WAKO Chemicals USA, Inc.**  
 1600 Bellwood Road  
 Richmond, VA 23237

RESPONDENT

1600 Bellwood Road  
 Richmond, VA 23237

FACILITY

) **CONSENT AGREEMENT:**  
 )  
 ) U.S. EPA Docket Number  
 ) **RCRA-3-2009-0013**  
 )  
 ) Proceeding under Section 3008  
 ) of the Resource Conservation and  
 ) Recovery Act, as amended,  
 ) 42 U.S.C. § 6928  
 )

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

This Consent Agreement and Final Order is entered into by the Director, Land and Chemicals Division, U. S. Environmental Protection Agency, Region III (“Complainant”) and WAKO Chemicals USA, Inc. (“Respondent” or “WAKO”), pursuant to Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(1) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”).

Pursuant to Sections 22.13(b), 22.18(b)(2), and 22.18.(b)(3) of the Consolidated Rules, this Consent Agreement and Final Order (“CA/FO”) resolves Respondent's alleged violations of RCRA Subtitle C, 42 U.S.C. §§ 6921- 6939e , and the Commonwealth of Virginia’s (“Virginia” or “Commonwealth”) Hazardous Waste Management Regulations authorized by the U. S. Environmental Protection Agency, Region III (“EPA”) pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), with regard to operations at the Respondent’s Facility located at 1600 Bellwood Road, Richmond, Virginia .

On December 18, 1984, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state hazardous waste management program *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The authorized Virginia hazardous waste management program (“VHWMP”) was revised, effective

September 29, 2000 (the "2000 VHWMP") (*see* 65 *Fed. Reg.* 46606 (July 31, 2000)), June 20, 2003 (the "2003 VHWMP") (*see* 68 *Fed. Reg.* 36925 (June 20, 2003)), and July 10, 2006 (the 2006 VHWMP") (*see* 71 *Fed. Reg.* 27204 (May 10, 2006)). The applicable provisions of the VHWMP are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. Section 6928(a).

The 2000, 2003 and 2006 VHWMP, with exceptions not relevant to this matter, incorporate by reference the federal hazardous waste regulations as set forth in the July 1, 1995 and July 1, 2001 Code of Federal Regulations ("C.F.R."). Citations in this CA/FO to the applicable VHWMP will set forth the appropriate federal regulation, as codified in the most recent edition of C.F.R. (July 1, 2004), as well as the Virginia provision which incorporates such federal regulation by reference.

EPA has given Virginia, through the Virginia Department of Environmental Quality ("VaDEQ"), prior notice of the issuance of this Consent Agreement in accordance with Section 3008(a)(2), of RCRA, 42 U.S.C. § 6928(a)(2).

## II. GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA/FO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA/FO.
3. Respondent agrees not to contest the Complainant's jurisdiction with respect to the execution or the enforcement of this CA/FO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.
7. Complainant has agreed to settle its claim for civil penalties assessed against Respondent for the violations alleged in this CA/FO for a civil penalty of Thirty Eight Thousand, Four Hundred and Ten Dollars (\$38,410.00).
8. The provisions of this CA/FO shall be binding upon Complainant, Respondent and Respondent's officers, directors, successors and assigns.

9. This CA/FO constitutes a settlement by Complainant of all its claims for civil penalties pursuant to Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), for the specific violations alleged herein. Compliance with this CA/FO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.
10. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state and local law. Furthermore, Complainant reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CA/FO, following entry of this CA/FO.
11. Complainant reserves the right to commence action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment.
12. Each of the undersigned representatives of the parties certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.
13. This CA/FO constitutes the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
14. The effective date of this CA/FO is the date upon which the CA/FO, after signature by the Regional Administrator of EPA-Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules.
15. EPA has given the Commonwealth of Virginia prior notice of the issuance of this CA/FO in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. Section 6928(a)(2).

### **III. COMPLAINANT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

16. In accordance with Section 22.18(b)(2) of the Consolidated Rules of Practice, Complainant makes the following findings of fact and conclusions of law.
  17. Respondent is, and was at the time of the violations alleged in this Consent Agreement, a corporation incorporated in the Commonwealth of Virginia and doing business in Commonwealth of Virginia and is a "person" as that term is defined in RCRA Section 1004(15), 42 U.S.C. Section 6903(15), and 9 VAC 20-60-260, which, with exceptions not relevant to this matter, incorporates by reference 40 C.F.R. § 260.10.
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18. Respondent is and was, at all times relevant to the violations alleged in this Consent Agreement, the “owner” and “operator” of a “facility”, as those terms are defined by 9 VAC 20-60-260, which, with exceptions not relevant to this Consent Agreement, incorporates by reference 40 C.F.R. § 260.10. The Facility is located at 1600 Bellwood Road, Richmond, Virginia (“the Facility”). The Facility is primarily involved with the manufacture of super absorbent polymers.
  19. On or about November 28, 1989, Respondent notified VaDEQ regarding its hazardous waste activity for the Facility, pursuant to Section 3010 of RCRA, 42 U.S.C. Section 6930, identifying itself as a Large Quantity Generator (“LQG”) of hazardous waste. Subsequently EPA acknowledged VaDEQ’s assignment of EPA ID No. VAD988170445 to the Facility.
  20. On March 20, 2007, Complainant conducted a Compliance and Evaluation Inspection (“CEI”) at the Facility.
  21. From at least November 28, 1989 to the date of the CEI Respondent generated TK-105, TK-1061, TK-1052, V-50 Structure, Used Carbon, Laboratory Wastes mixed with TK-105 and Karl Fischer & Silver hazardous waste as a result of its operations at the Facility. The Facility’s manifests for 2005 and 2006 indicate that the Facility is in fact a LQG of hazardous waste.
  22. Respondent’s TK-105, TK-1061, TK-1052, V-50 Structure, Used Carbon, Laboratory Wastes mixed with TK-105 and Karl Fischer & Silver hazardous waste generated in connection with its operations at the Facility are “solid waste,” and “hazardous waste” as those terms are defined in 9 VAC 20-60-260 and 261, which incorporate by reference 40 C.F.R. Sections 260.10 and 261.2 and .3.
  23. Respondent is and, at all times relevant to the alleged violations in this Consent Agreement, has been a “generator” of, and has engaged in the “storage” of, at the Facility, in “containers”, materials that are solid wastes and hazardous waste, as those terms are defined in 9 VAC 20-60-260 and 261, which incorporate by reference 40 C.F.R. Sections 260.10 and 261.2 and .3, including the hazardous waste referred to herein.
  24. At all times relevant to the violations alleged herein, Respondent was the “owner” and “operator” of hazardous waste storage “tanks” and their associated “equipment” at the Facility, identified as Hazardous Waste Tanks TK-105, TK-1052 and TK-1061, as those terms are defined in 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. §260.10, 40 C.F.R. §264.1031 and 40 C.F.R. §265.1031. Hazardous Waste Tank TK-105 and TK-1061 were used for the storage of toluene and methanol waste. TK-1052 was used for the storage of caustic wastes.
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25. The toluene and methanol wastes and caustic wastes stored in TK-105, TK-1052 and TK-1061 are and were at all times relevant to the violations alleged herein, "hazardous wastes," as the term is defined in 9 VAC 20-60-260 and 261, which incorporates by reference 40 C.F.R. §§260.10 and 261.2 and 261.3.
26. Respondent's hazardous waste storage tanks and their associated equipment at the Facility, identified as Hazardous Waste Tanks TK-105, TK-1052 and TK-1061, are and were at all times relevant to the violations alleged herein, "new tank systems" as those terms are defined in 9 VAC 20-60-260.
27. Respondent is and was, at all times relevant to the violations alleged herein, the "owner" and "operator" of four ("4") "containers" used for the "storage" of hazardous wastes (the description of these hazardous wastes is the same as the "hazardous wastes" discussed in Paragraphs 22 through 25, above), as those terms are defined in VAC 20-60-260 and 261, which incorporate by reference 40 C.F.R. Sections 260.10 and 261.2 and .3, located at the Facility in the satellite sections of the following areas:
- a. **Maintenance Shop**
  - b. **Reagents Laboratory Building (QC Lab)**
  - c. **K-Plant Laboratory**
28. Respondent is and was, at all times relevant to the violations alleged herein, the "owner" and "operator" of "equipment" at the Facility subject to 40 C.F.R. Part 264, Subpart BB, which is incorporated by reference into 9 VAC 20-60-264 and 40 C.F.R. Part 265, Subpart BB, which is incorporated by reference into 9 VAC 20-60-265, as described herein.

### **COUNT I**

#### **(Operating a Storage Facility Without a Permit)**

29. The allegations of Paragraphs 1 through 28 of the Consent Agreement are incorporated herein by reference.
30. Section 3005(a) and (e) of RCRA, 42 U.S.C. Section 6925(a) and (e), and 9 VAC 20-60-270 (which incorporates by reference 40 C.F.R. § 270.1(b)) provide, in pertinent part, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for such facility or has qualified for interim status.
31. 40 C.F.R. §262.34 (a) which is incorporated by reference into 9 VAC 20-60-262, provides that a generator may accumulate hazardous waste on site for 90 days or less without a permit or interim status provided that, *inter alia*:
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- a. The waste is placed in containers and the generator complies with 40 C.F.R. Part 265, Subparts I, AA, BB and CC;
- b. The waste is placed in tanks and the generator complies with 40 C.F.R. Part 265, Subparts J, AA, BB and CC;
- c. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
- d. While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and
- e. The generator complies with the requirements for owners or operators set forth in 40 C.F.R. Part 265, Subparts C and D, 40 C.F.R. §§ 265.16 and 268.7(a)(5).

**Failure to Keep Containers Closed in Accordance with 40 C.F.R. § 265.173(a):**

32. 40 C.F.R. § 265.173(a), which is part of 40 C.F.R. Part 265, Subpart I (as referenced in Paragraph 31(a) above), provides that a container holding hazardous waste must always be closed during storage, except when necessary to add or remove waste.
33. On March 20, 2007, Respondent had in storage four (4) containers of hazardous wastes (described in Paragraph 27 above) located at the Facility. The four containers were open, even though at the time of the March 20, 2007 CEI, hazardous waste was not being added or removed from the containers.

**Failure to Mark Equipment in Accordance with 40 C.F.R. § 265.1050:**

34. 40 C.F.R. § 265.1050(b), which is part of 40 C.F.R. Part 265, Subpart BB (as referenced in Paragraph 31(a), above), with exceptions and exclusions not pertinent here, applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:
  - (1) A unit that is subject to the permitting requirements of 40 C.F.R. Part 270, or
  - (2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 C.F.R. § 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 C.F.R. Part 270, or
  - (3) A unit that is exempt from permitting under the provisions of 40 C.F.R. § 262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 C.F.R. § 261.6

35. 40 C.F.R. § 265.1050(c), which is part of 40 C.F.R. Part 265, Subpart BB (as referenced in Paragraph 31(a), above), provides that each piece of equipment to which 40 C.F.R. Part 265 Subpart BB applies shall be marked by the owner or operator in such a manner that it can be distinguished readily from other pieces of equipment.
36. At the time of the March 20, 2007 CEI, 40 C.F.R. Part 265 Subpart BB applied, as described in 40 C.F.R. § 265.1050(b), to the equipment associated with Hazardous Waste Tanks TK-105 and TK-1061.
37. At the time of the March 20, 2007 CEI Respondent had not marked the equipment associated with Hazardous Waste Tank TK-105 that was subject to 40 C.F.R. Part 265, Subpart BB, in such a manner that such equipment could be distinguished readily from other pieces of equipment, in accordance with 40 C.F.R. § 265.1050(c).

**Failure to meet monitoring requirements in accordance with 40 C.F.R. §265**

38. 40 C.F.R. §265.1052(a)(1), which is part of 40 C.F.R. Subpart BB (as referenced in paragraph 31(a) above) provides, with exceptions not relevant to this matter, that each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in 40 C.F.R. §264.1063(b).
39. 40 C.F.R. §265.1057(a), which is part of 40 C.F.R. Subpart BB (as referenced in paragraph 31(a) above) provides, with exceptions not relevant to this matter, that each valve in light liquid service shall be monitored monthly to detect leaks by the methods specified in 40 C.F.R. §264.1063(b).
40. At the time of the March 20, 2007 CEI Respondent had at the Facility the following equipment, in light liquid service, associated with the Hazardous Waste Tank TK-105 required to be monitored by 40 C.F.R. §265.1052(a)(1) and .1057(a):
  - a. Valve - 1001
  - b. Valve - 1002
  - c. Valve - 1003
  - d. Valve - 1004
  - e. Valve - 1005
  - f. Valve - 1006
  - g. Valve - 1007
  - h. Valve - 1008
  - i. Valve - 1009
  - j. Valve - 1010
  - k. Valve - 1011
  - l. Valve - 1012
  - m. Valve - 1013
  - n. Valve - 1014

- o. Valve - 1015
- p. Check Valve - 1001
- q. Check Valve - 1002
- r. Check Valve - 1003
- s. Check Valve - 1004
- t. Check Valve - 1005
- u. Check Valve - 1006
- v. Pump - 105
- w. Pump - 402
- x. Pump - 760

41. From May 1, 2003 to February 11, 2008, Respondent failed to monitor the valves and pumps in light liquid service associated with Hazardous Waste Tank TK-105 which were required to be monitored by 40 C.F.R. §265.1052(a)(1) and .1057(a).

**Failure to obtain a written assessment for a new tank in accordance with 40 C.F.R. §265.192**

42. 40 C.F.R. § 265.192(a), which is Part of 40 C.F.R. Part 265, Subpart J, provides that owners or operators of new tank systems or components must obtain a written assessment, reviewed and certified by a qualified Professional Engineer in accordance with 40 C.F.R. §270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste.
43. At the time of the March 20, 2007 CEI, Respondent had not obtained a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with 40 C.F.R. § 270.11(d), attesting that the tank systems for Hazardous Waste Tanks TK-105, TK-1052 and TK1061 located at the Facility had sufficient structural integrity and were acceptable for the storing and treating of hazardous waste pursuant to 9 VAC 20-60-265, which incorporates by reference 40 C.F.R. §265.192.

**Failure to Qualify for Less-than Ninety-Day Storage Exemption in Accordance with 40 C.F.R. § 270.1(b)**

44. Because Respondent stored hazardous waste in containers without keeping such containers closed during storage, except when necessary to add or remove waste from such containers (*see* Paragraph 32); failed to mark Hazardous Waste Tank TK-105 and the equipment associated with such Hazardous Waste Tank that was subject to 40 C.F.R. Part 265, Subpart BB in such a manner that such equipment could be distinguished readily from other pieces of equipment (*see* Paragraph 37); failed to meet monitoring requirements for such equipment (*see* Paragraph 39) and failed to obtain a written assessment for TK-1051, TK-1052 and TK-1061 (*see* Paragraph 42), Respondent failed to satisfy the conditions set forth at 9 VAC 20-60-262 (which incorporates by reference 40 C.F.R. §262.34) for a generator to qualify for an exemption from the permit and/or
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interim status requirements of RCRA Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270, for the storage of hazardous waste.

45. Respondent does not have, and at the time of the acts and/or omissions described above, did not have a permit or interim status to store hazardous waste at the Facility as required by 9 VAC 20-60-270 (which incorporates by reference 40 C.F.R. § 270.1(b)), and Section 3005(a) and (e) of RCRA.
46. Respondent violated 9 VAC 20-60-270 (which incorporates by reference 40 C.F.R. § 270.1(b)) and RCRA, 42 U.S.C. § 6925, by operating a hazardous waste storage facility without a permit or interim status.

### COUNT II

#### **(Failure to Keep Containers of Hazardous Waste Closed)**

47. The allegations in Paragraphs 1 through 46 are incorporated herein by reference as though fully set forth herein.
48. 40 C.F.R. § 264.173(a), which is incorporated by reference into 9 VAC 20-60-264, provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
49. On March 20, 2007 at the time of the CEI, Respondent failed to keep four (4) containers of hazardous waste described in Paragraph 33, above, closed during storage, even though it was not necessary to add or remove waste.
50. Respondent violated 9 VAC 20-60-264 (which incorporates by reference 40 C.F.R. § 264.173(a)) by failing to keep the four (4) containers of hazardous waste described in Paragraph 33, above, closed during storage, even though it was not necessary to add or remove waste.

### COUNT III

#### **(Failure to Mark Equipment)**

51. The allegations in Paragraphs 1 through 50 are incorporated herein by reference as though fully set forth herein.
  52. With exceptions not pertinent here, 40 C.F.R. § 264.1050(b), which is part of 40 C.F.R. Part 264, Subpart BB, which is incorporated by reference into 9 VAC 20-60-264, applies
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to equipment that contains or contacts hazardous wastes with organic concentrations of at least ten percent (10%) by weight that are managed in one of the following:

- (1) A unit that is subject to the permitting requirements of 40 C.F.R. Part 270, or
- (2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 C.F.R. § 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 C.F.R. Part 270, or
- (3) A unit that is exempt from permitting under the provisions of 40 C.F.R. § 262.34(a) (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 C.F.R. § 261.6.

53. On March 20, 2007 at the time of the CEI, 40 C.F.R. Part 264, Subpart BB applied the equipment associated with Hazardous Waste Tank TK-105, and such equipment was not exempt or excluded from the requirements of such subpart.
54. 40 C.F.R. § 264.1050(d), which is part of 40 C.F.R. Part 264, Subpart BB and which is incorporated by reference into 9 VAC 20-60-264, provides that each piece of equipment to which 40 C.F.R. Part 264, Subpart BB applies shall be marked by the owner or operator in such a manner that it can be distinguished readily from other pieces of equipment.
55. On March 20, 2007, at the time of the CEI, Respondent failed to mark the equipment associated with Hazardous Waste Tank TK-105 that was subject to 40 C.F.R. Part 264, Subpart BB, in such a manner that such equipment could be distinguished readily from other pieces of equipment pursuant to 40 C.F.R. § 264.1050(d).
56. Respondent violated 40 C.F.R. § 264.1050(d), which is part of 40 C.F.R. Part 264, Subpart BB, by failing to mark the equipment associated with Hazardous Waste Tank TK-105 in such a manner that such equipment could be distinguished readily from other pieces of equipment.

#### **COUNT IV**

##### **(Failure to meet air emissions monitoring requirements )**

57. The allegations in Paragraphs 1 through 56 are incorporated herein by reference as though fully set forth herein.
58. As provided in 40 C.F.R. §264.1050(b), which is incorporated by reference into 9 VAC 20-60-264, with exceptions not relevant to this matter, 40 C.F.R. Part 264, Subpart BB

applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(a) A unit that is subject to the permitting requirements of 40 C.F.R. Part 270, or

(b) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 C.F.R. §262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 C.F.R. Part 270, or

(c) A unit that is exempt from permitting under the provisions of 40 C.F.R. §262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 C.F.R. §261.6.

59. Hazardous Waste Tank TK-105 is and was, at the time of the applicable violations alleged herein, a unit of a type described in 40 C.F.R. §264.1050(b).
60. 40 C.F.R. §264.1052(a)(1), which is incorporated by reference into 9 VAC 20-60-264, provides, with exceptions not relevant to this matter, that each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in 40 C.F.R. §264.1063(b).
61. From May 1, 2003 to February 11, 2008, Respondent failed to monitor the valves and pumps in light liquid service associated with Hazardous Waste Tank TK-105.
62. Respondent violated 9 VAC 20-60-264 (which incorporates by reference 40 C.F.R. §264.1052(a)) by its acts or omissions as described in Paragraph 61, above.

### COUNT V

#### **(Failure to obtain a written assessment for a new tank)**

63. The allegations in Paragraphs 1 through 62 are incorporated herein by reference as though fully set forth at length herein.
  64. 40 C.F.R. 264.192(a), which is incorporated by reference into 9 VAC 20-60-264, provides that owners or operators of new tank systems or components must obtain a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with 40 C.F.R. § 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste.
  65. At the time of the May 20, 2007 CEI Respondent had not obtained a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with 40 C.F.R.
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§270.11(d), attesting that the tank systems, Hazardous Waste Tanks TK-105, TK-1052 and TK1061 located at the Facility, had sufficient structural integrity and were acceptable for the storing and treating of hazardous waste, for Hazardous Waste Tanks TK-105, TK-1052 and TK1061.

66. Respondent violated 9 VAC 20-60-264 (which incorporates by reference 40 C.F.R. § 264.192(a)), by failing to obtain a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with 40 C.F.R. § 270.11(d), for Hazardous Waste Tanks TK-105, TK-1052 and TK1061.

### **COUNT VI**

#### **(Failure to keep universal waste lamps in closed containers )**

67. The allegations in Paragraphs 1 through 66 are incorporated herein by reference as though fully set forth at length herein.
68. 40 C.F.R. § 273.13(d)(1) provides that a small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, specifically, a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
69. At the time of the March 20, 2007 CEI Respondent was a “small quantity handler” of “universal waste” “lamps” at the Facility as those terms are defined in 40 C.F.R. § 273.9.
70. At the time of the March 20, 2007 CEI Respondent had not contained all of its used fluorescent universal waste lamps in containers or packages that were structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Specifically, several used fluorescent universal waste lamps at the Facility were found in containers which were not closed as required by 40 C.F.R. § 273.13(d)(1).
71. Respondent violated 40 C.F.R. §273.13(d)(1) by not containing its universal waste lamps in closed containers or packages

### **COUNT VII**

#### **(Failure to label containers of universal waste lamps )**

72. The allegations in Paragraphs 1 through 71 are incorporated herein by reference as though
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fully set forth at length herein.

73. 40 C.F.R. § 273.14(e) provides that a small quantity handler of universal waste must clearly mark or label each lamp or a container or package in which such lamps are contained with one of the following phrases: "Universal Waste--Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".
74. At the time of the March 20, 2007 CEI Respondent, a small quantity handler of universal waste lamps, was storing six (6) containers of universal waste lamps at the Facility but did not label or mark its universal waste lamps or its waste lamp containers as required by 40 C.F.R. §273.14(e).
75. Respondent violated 40 C.F.R. §273.14(e) by not labeling or marking its six (6) containers of universal waste lamps or its waste lamp containers as required by 40 C.F.R. § 273.14(e).

#### **IV. COMPLIANCE ORDER**

76. Respondent shall perform the following Compliance Tasks within the time periods specified. "Days" as used herein shall mean calendar days unless specified otherwise.
    - a. Immediately cease the storage of hazardous wastes at the Facility except in accordance with a permit issued by, or an exemption or exclusion allowed by, the Commonwealth of Virginia's authorized hazardous waste management regulations, 9 VAC 20-60-12 *et seq.*, and/or EPA's hazardous waste management regulations, 40 C.F.R. Parts 260-279, as applicable.
    - b. Immediately cease handling universal waste lamps at the Facility except in accordance with 40 C.F.R. Part 273.
    - c. **Certification:** Within sixty (60) days of the effective date of this CA/FO, Respondent shall certify to EPA in writing that it is in compliance with the Compliance Tasks described above. Such certification shall be made in the manner specified in Paragraph 76(d) of this Compliance Order.
    - d. **Submissions to EPA:** Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this Compliance Order shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs
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similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The aforesaid certification shall provide the following statement above the signature of the responsible corporate officer signing the certification on behalf of the Respondent:

*I certify under penalty of law that this document and all attachments are true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.*

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

e. Any notifications or submissions to EPA required by this Compliance Order shall be sent to the attention of:

Jan Szaro (3LC70)  
RCRA Enforcement and Compliance Officer  
United States Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029; and

Rodney Travis Carter (3RC30)  
Senior Asst. Regional Counsel  
United States Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029.

**V. OTHER APPLICABLE LAWS**

77. Nothing in this CA/FO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable Federal, State or local laws or regulations.

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**VI. CIVIL PENALTY**

78. In settlement of the above-captioned action, Respondent agrees to pay a civil penalty of Thirty Eight Thousand, Four Hundred and Ten Dollars (\$38,410.00) in satisfaction of all claims for civil penalties which Complainant has under RCRA Section 3008(a), 42 U.S.C. § 6928(a), for the violations alleged in this CA/FO. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CA/FO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, as described in the attached Final Order, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CA/FO is mailed or hand-delivered to Respondent.
79. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of the violations and good faith efforts of the Respondent to comply, as provided for in Section 3008(a)(3) of RCRA, 42 U.S.C. Section 6928(a)(3).
80. Respondent shall pay the civil penalty specified in paragraph 78, above, by electronic funds transfer ("EFT"), as described below, or by sending a corporate check or certified check, made payable to the order of "**United States Treasury.**"

Checks sent by regular US Postal Service mail delivery must be sent to:

U.S. E.P.A.  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact numbers = Craig Steffen (513-487-2091) or Eric Volck (513-487-2105).

The following address can be used for common carriers such as FedEx, Airborne, DHL, and UPS:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-4087

Checks drawn on foreign banks with no USA branches no matter what the currency should be sent directly to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. ML King Drive  
Cincinnati, OH 45268-0001

Any EFT shall be transmitted to:

Wire Transfer

Federal Reserve Bank of New York  
ABA = 021030004  
Environmental Protection Agency  
Account Number: 6810727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

ACH

(also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
ABA: 051036706  
Account Number: 310006  
CTX Format Transaction Code 22 - checking

Environmental Protection Agency  
808 17<sup>th</sup> Street NW  
Washington, D.C. 20074

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field.  
Open the form and complete required fields.

All payments by Respondent shall reference its name and address and the Docket Numbers of this case (RCRA-3-2009-0013).

Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CA/FO. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to;

Rodney Travis Carter  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC30)  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

81. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this CA/FO.
  82. Pursuant to 31 U.S.C. Section 3717 and 40 C.F.R. Section 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owned to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
  83. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. Section 13.11(a).
  84. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. Section 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for
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administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

85. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. Section 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. Section 901.9(d).

### **VII. RESERVATION OF RIGHTS**

86. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO.

### **VIII. FULL AND FINAL SATISFACTION**

87. Payment of the penalty specified in this Consent Agreement and compliance with the terms and conditions of this Consent Agreement shall constitute full and final satisfaction of Complainant's claims for civil penalties for the specific violations alleged in this Consent Agreement.

### **IX. PARTIES BOUND**

88. This CA/FO shall apply to and be binding upon EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. By his/her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this CA/FO.

### **X. EFFECTIVE DATE**

89. The effective date of this CA/FO is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk.

**XI. ENTIRE AGREEMENT**

90. This CA/FO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA/FO.

For the Respondent:

WAKO Chemicals USA, Inc.

Date: November 5, 2008

By: 

For the Complainant:

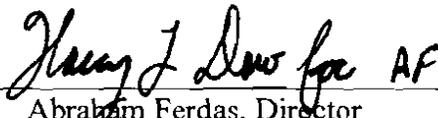
U.S. Environmental Protection Agency, Region III

Date: November 21, 2008

By:   
Rodney Travis Carter, Esq.  
Senior Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommends that the Regional Administrator of the U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 12/5/2008

By:   
Abraham Ferdas, Director  
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, PA 19103-2029

IN THE MATTER OF:

<b>WAKO Chemicals USA, Inc.</b>	)	
1600 Bellwood Road	)	
Richmond, VA 23237	)	U.S. EPA Docket Number
	)	<b>RCRA-3-2009-0013</b>
	)	
RESPONDENT	)	
	)	Proceeding under Section 3008
1600 Bellwood Road	)	of the Resource Conservation and
Richmond, VA 23237	)	Recovery Act, as amended,
	)	42 U.S.C. § 6928
FACILITY	)	

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**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, WAKO Chemicals USA, Inc. , have executed a document entitled "Consent Agreement" which I ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are incorporated herein by reference.

NOW, THEREFORE, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), and based upon the representations of the parties set forth in the Consent Agreement that the civil penalty amount agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), IT IS HEREBY ORDERED THAT Respondent shall pay a civil penalty in the amount of Thirty Eight Thousand, Four Hundred and Ten Dollars (\$38,410.00) as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 12/16/08

BY: Renée Sarajian  
Renée Sarajian  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region III

## CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, **In the Matter of: WAKO Chemicals USA, Inc. Docket Number RCRA-03-2009-0013**, to the persons and addresses listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

Brian L. Buniva Esq.  
*LeClair Ryan*  
*Riverfront Plaza*  
*East Tower*  
*951 East Byrd Street*  
*Richmond, VA 23219*

Dennis M. Ryan  
*LeClair Ryan*  
*Riverfront Plaza*  
*East Tower*  
*951 East Byrd Street*  
*Richmond, VA 23219*  
*Registered Agent for*  
**WAKO Chemicals USA, Inc.**

Dated: \_\_\_\_\_

*12/17/08*

  
\_\_\_\_\_  
Rodney Travis Carter, Esq.  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

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