UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

JUN 16 2014

Certified Mail – Return Receipt Requested

Lcdo. Jose J. Lugo Toro
Lugo Toro Law Offices
PMB 171
400 Calle Calaf
San Juan, Puerto Rico 00918-1314

Re: In the Matter of W.R. Recycling Inc.
Docket No.: RCRA-02-2012-7106

Dear Mr. Toro:

Enclosed is a fully executed Consent Agreement and Final Order (CA/FO) under Section 3008 of the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6928, resolving the above referenced action.

Please do not hesitate to contact me if you have any questions. Thank you for your cooperation in this matter.

Sincerely,

Amy R. Chester
Assistant Regional Counsel
212 637-3213

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on the June 16, 2014 I caused a copy of the Consent Agreement and Final Order entered in In the Matter of: W.R. Recycling Inc. Docket No.: RCRA-02-2012-7106 to be sent to the following persons in the manner indicated:

By United States First Class Mail:

Lcdo. José J. Lugo Toro
LUGO TORO LAW OFFICES
PMB 171
400 Calle Calaf
San Juan, PR 00918-1314

Maria Victoria Rodriguez Munoz
Director
Land Pollution Control Division
Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

By Hand Delivery:

Karen Maples
Regional Hearing Clerk
U.S. EPA – Region 2
290 Broadway, 16th Floor
New York, New York 10007

Date: June 16, 2014

Lynn Khawly

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of: W.R. Recycling Inc. Respondent Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.	**CONSENT AGREEMENT AND FINAL ORDER** Docket No.: **RCRA-02-2012-7106**

PRELIMINARY STATEMENT

This civil administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.

The Respondent is W.R. Recycling, Inc. ("Respondent"). Respondent owns and operates a commercial auto crushing and scrap recycling business in Cabo Rojo, Puerto Rico.

Under Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the Administrator of EPA may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program. The Commonwealth of Puerto Rico ("Puerto Rico" or "the Commonwealth") is a "State" within the meaning of this provision. Puerto Rico has not received authorization to operate a hazardous waste program pursuant to this provision. As a result, federal hazardous waste regulations remain in effect.

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on or about September 29, 2012. The Complaint alleged that Respondent failed to comply with RCRA and hazardous waste regulations at its facility in Puerto Rico. Complainant and Respondent conducted settlement negotiations which led to this agreement.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

RESPONDENT

1. Respondent is W.R. Recycling Inc.

2. Since 2007, Respondent has been, and remains, the owner and operator of a commercial auto crushing and scrap recycling business located at Carr 103 Km. 2.3 Sector Bajura, Cabo Rojo, Puerto Rico 00623.

3. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

4. The Cabo Rojo Puerto Rico location where Respondent conducts its scrap recycling business constitutes a "new facility" and a "facility" as those terms are defined in 40 C.F.R. § 260.10 (hereinafter "facility").

5. Respondent is and has been the "owner" of the facility as that term is defined in 40 C.F.R. § 260.10.

6. Respondent is and has been the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10.

7. Respondent never submitted a Section 3010 Notification of Regulated Waste Activity to EPA. However, EPA assigned Respondent Identification Number PRN008021347 after it conducted an inspection of the facility in 2009.

8. Respondent is and has been a "generator" of "hazardous waste" at its facility as those terms are defined in 40 C.F.R. § 260.10. The requirements for generators are set forth in 40 C.F.R. Part 262.

9. Respondent never submitted a Part A or a Part B Permit Application to EPA for its facility and never received "interim status" or a hazardous waste permit to treat, store or dispose of hazardous waste at its facility.

10. In the course of doing business, Respondent receives decommissioned or "junked" automobiles at its facility. Automobiles contain numerous materials including gasoline, diesel fuel, fuel filters, mercury switches, lead wheel weights, battery cable ends and terminals, air bags, batteries, high intensity lights, instrument panels, antifreeze, oil filters and oil.

11. Respondent stores and then crushes junked vehicles at its facility. Respondent sells the crushed vehicles, which are valued for their metal, to shredders and/or foundries.

12. Prior to crushing, Respondent systematically removed the batteries, tires, wheels, and catalytic convertors from vehicles. However, Respondent neither removed engines, transmissions, airbags or airbag components, mercury switches, oil filters, fuel filters, or air conditioners, nor drains gas tanks, air conditioner fluids, or any other auto fluids, from the junked vehicles prior to storing or crushing the vehicles.

13. On or about September 29 and 30, 2009, March 30, 2011, and August 29, 2012, EPA inspected Respondent's facility to determine its compliance with RCRA and its implementing regulations (hereafter "the 2009 Inspection," "the 2011 Inspection," the "2012 Inspection," or if referred to jointly, "the Inspections.")

Failure to Make Hazardous Waste Determination

14. Pursuant to 40 C.F.R. § 262.11, a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste using the method set forth therein.

15. Pursuant to 40 C.F.R. § 261.2(b)(3) materials are solid wastes if they are "abandoned by being disposed of ... or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of...."

16. In the course of its operations, Respondent receives motor vehicles and other discarded goods for recycling. Many if not most of the vehicles received contain fluids and/or parts that may constitute and/or contain hazardous waste. These fluids and parts include gasoline; diesel fuel; fuel filters; coolant; used oil; lead wheel weights; automobile components that may contain mercury (including light switches, anti-lock brake systems, ride leveling sensors, headlights and taillights, and virtual image instrument panels); and/or airbag cartridges that may contain sodium azide.

17. During at least the time period starting with the date of the 2009 Inspection and ending on the date of the 2012 Inspection, Respondent stored and crushed junked motor vehicles without first removing or draining all of the fluids and parts referenced in Paragraph 16 from the vehicles.

18. During at least the time period starting with the date of the 2009 Inspection and ending on date of the 2011 Inspection, Respondent has stored and crushed vehicles directly on top of earthen ground (soil) at its facility. While some fluid was captured during the crushing process in the crusher's drip pan, the storage and crushing of the vehicles resulted in the release, leaking, spilling or placing (hereafter the "disposal") of the fluids and parts referenced in Paragraph 16 directly onto the soil.

19. At the time of the 2009 and 2011 Inspections, fluorescent lights and mercury lamps were discarded in the trash.

20. Each material identified in Paragraphs 16 and 19 was "abandoned by being disposed of" at Respondent's facility, within the meaning of 40 C.F.R. § 261.2(b) and each material therefore constitutes a "solid waste," as defined in 40 C.F.R. § 261.2.

21. Respondent did not make the required determinations as to whether any of the solid wastes referenced in Paragraph 20 constituted hazardous wastes.

22. Each failure by Respondent to determine if the solid wastes referenced in Paragraph 16 constitutes a hazardous waste is a violation of 40 C.F.R. § 262.11.

Disposal of Hazardous Waste without a Permit

23. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1(c), an owner or operator cannot dispose of hazardous wastes at its facility without having obtained a permit or interim status authorizing such disposal.

24. "Disposal" is defined in 40 C.F.R. § 260.10 as the "discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or onto any land so that such solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters."

25. During at least the time period starting with the 2009 Inspection and ending with the 2011 Inspection, Respondent, in the course, or as a result, of crushing motor vehicles, deposited, disposed of, dumped, spilled and/or leaked (hereafter referred to as "released") gasoline directly onto the soil at its facility.

26. The gasoline released onto the soil at the Respondent's facility constitutes a "solid waste," as that term is defined 40 C.F.R. § 261.2.

27. Pursuant to 40 C.F.R. § 261.3, any solid waste which exhibits any characteristic identified in Subpart C of 40 C.F.R. Part 261, such as ignitability or toxicity, constitutes a hazardous waste.

28. Gasoline is ignitable, and toxic for benzene, as those characteristics are defined in 40 C.F.R. § 261.21 and 40 C.F.R. § 261.24, respectively.

29. The gasoline disposed of at Respondent's facility constitutes a "hazardous waste" as defined in 40 C.F.R. §§ 261.21 and 261.24.

30. Each release of gasoline onto the soil at the Respondent's facility constitutes a "disposal" of "hazardous waste" as defined in 40 C.F.R. § 260.10 and 40 C.F.R. § 261.3, respectively.

31. Respondent's disposal of hazardous waste at its facility, which does not have interim status or a permit authorizing such disposal, is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1.

Failure to Minimize the Possibility of Releases

32. Pursuant to 40 C.F.R. § 264.1(b), owners and operators of all facilities which treat, store or dispose of hazardous waste must, unless subject to certain exceptions which are inapplicable here, comply with the requirements set forth in 40 C.F.R. Part 264.

33. Pursuant to 40 C.F.R. § 264.31, owners and operators must maintain their facilities to "minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

34. While operating and maintaining its facility, Respondent:

a. During at least the time period starting with the date of the 2009 Inspection and ending on the date of the 2012 Inspection, failed, and did not have procedures in place, to remove all fluids (such as gasoline and diesel fuel) and parts (such as mercury containing light switches, high intensity discharge systems (*e.g.*, headlights and tail lamps), and mercury containing G-force sensors in anti-lock brake systems from junked automobiles prior to receiving and storing such vehicles, potentially permitting the release of hazardous waste and/or hazardous waste constituents into the environment from such fluids and parts.

b. During at least the time period starting with the date of the 2009 Inspection and ending on the date of the 2011 Inspection, stored and crushed motor vehicles directly on the soil rather than on a non-porous surface pad, thereby allowing fluids that may contain hazardous waste or hazardous waste constituents to be released directly onto the soil at the facility.

c. During at least the time period starting on the date of the 2009 Inspection and ending on the date of the 2012 Inspection, crushed motor vehicles containing volatile hazardous waste constituents, including benzene, thereby allowing fluids that may contain hazardous waste or hazardous waste constituents to volatize into the air.

d. During at least the time period starting with the date of the 2009 Inspection and ending on the date of the 2012 Inspection, failed to have a sufficient stormwater runoff collection system to minimize or eliminate runoff or percolation of stormwater and fluids released from vehicles before, during or after crushing, thereby allowing storm water, which may be contaminated with hazardous wastes and/or hazardous waste constituents from the vehicles, to spread to and contaminate additional areas at the facility.

e. During at least the 2009 and 2011 Inspections, stored lead acid batteries and wheel weights uncovered in the open air on bare soil, permitting the release of hazardous waste or hazardous waste constituents into the environment.

f. During at least the 2011 and 2012 Inspections, stored fluids collected in the crushing process in the crusher's drip pan (which was not capped, enclosed or otherwise contained), and in open drums, risking the release of an amalgamation of hazardous wastes and/or hazardous waste constituents into the environment.

g. During at least the time period starting with the date of the 2009 Inspection and ending on the date of the 2012 Inspection, failed to equip the facility with spill and fire control equipment. The releases of used oil and fuel at the facility increased the risk of fires and explosions and thus potential releases of hazardous waste and/or hazardous waste constituents to the environment through fire, smoke and ash.

35. Each action or inaction set forth in Paragraph 34 constitutes a failure by Respondent to maintain or operate its facility in a manner minimizing the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in violation of 40 C.F.R. § 264.31.

Improper Disposal of Used Oil

36. "Used oil" is "any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities." 40 C.F.R. § 279.1.

37. Subpart I of 40 C.F.R. Part 279 sets forth the standards for the disposal of used oil that is not being recycled and is being disposed of. Pursuant to 40 C.F.R. § 279.81, used oils that are not recycled and are identified as hazardous waste must be managed and/or disposed of in accordance with hazardous waste requirements set forth in 40 C.F.R. Parts 260-266, 268 and 270. Pursuant to 40 C.F.R. § 279.81(b), used oils that do not constitute hazardous waste must be disposed of under the requirements of 40 C.F.R. Parts 257 and 258.

38. Since at least the 2009 Inspection through the 2012 Inspection, Respondent received junked motor vehicles which contained "used oil" as defined in 40 C.F.R. § 279.1.

39. During at least the period of time between the date of the 2009 Inspection through the end of the 2011 Inspection, Respondent crushed vehicles directly over the soil without first removing all of the used oil from the vehicles. Used oil was released or otherwise disposed of onto the soil at Respondent's facility during the crushing process.

40. Respondent's disposal of used oil at its facility without complying with hazardous waste requirements (if the used oil was a hazardous waste) or without complying with 40 C.F.R. Parts 257 and 258 (if the used oil was not a hazardous waste) constitutes violations of 40 C.F.R. § 279.81.

Failure to Label Used Oil Storage Containers

41. A "used oil generator" is defined at 40 C.F.R. § 279.20 as any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation."

42. Respondent removes and accumulates "used oil" as that term is defined in 40 C.F.R. § 279.1 from its service and support vehicles, as well as from heavy equipment used and/or maintained on site. Respondent is a "used oil generator" as that term is defined in 40 C.F.R. § 279.20.

43. Forty C.F.R. § 279.22(c) requires that containers used to store used oil at generator facilities must be labeled or marked with the words "used oil."

44. During at least the 2012 Inspection, Respondent stored used oil in numerous containers that were not labeled or marked with the words "used oil."

45. Respondent violated 40 C.F.R. § 279.22 by failing to properly label containers used to store used oil.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties and Respondent knowingly and voluntarily agrees as follows:

1. Commencing upon the effective date of this Consent Agreement and Final Order (CA/FO) and continuing thereafter, Respondent shall:

a. make hazardous waste determinations for each solid waste generated at its facility pursuant to 40 C.F.R. i 262.11;

b. maintain and operate the facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment pursuant to 40 C.F.R. i 264.31;

c. cease the disposal of hazardous waste at its facility unless or until it applies for and receives a hazardous waste permit from EPA authorizing such disposal pursuant to Section 3005 of RCRA and 40 C.F.R § 270.1;

d. cease the disposal of used oil at its facility unless or until it receives a permit authorizing such disposal, or otherwise acts in accordance with 40 C.F.R. Parts 257, 258, 260 - 266, 268, and 270; and

e. comply with all applicable requirements for used oil generators set forth in 40 C.F.R. Part 279 including labeling containers used to store used oil.

Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall send a Compliance Report to EPA detailing its present compliance with the requirements set forth in Paragraph 1 of this Consent Agreement. This Compliance Report shall include all appropriate documentation and evidence. If appropriate, Respondent may reference documentation previously submitted to EPA. The Compliance Report should be sent to:

Mr. Steven Petrucelli
Environmental Engineer
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

2. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies specific factual allegations contained in the Complaint.

3. Respondent shall pay a civil penalty to EPA in the total amount of twenty-eight thousand seven hundred and thirty-five ($28,735). This penalty amount shall be paid as follows:

a. The first installment of four thousand seven hundred and ninety dollars ($4,790) must be received within 90 days of the effective date of this CA/FO. (The date by which this first payment must be received shall hereinafter be referred to as the "Due Date.")

b. The second installment of four thousand seven hundred and ninety dollars ($4,790) must be received within 90 days of the due date;

c. The third installment of four thousand seven hundred and ninety dollars ($4,790) must be received within 180 days of the due date;

d. The fourth installment of four thousand seven hundred and ninety dollars ($4,790) must be received within 270 days of the due date;

e. The fifth installment of four thousand seven hundred and ninety dollars ($4,790) must be received within 360 days of the due date; and

f. The sixth installment of four thousand seven hundred and eighty-five dollars ($4,785) must be received within 450 days of the due date.

If Respondent fails to pay any installment timely ("missed installment"), the remainder of the penalty ("the outstanding penalty amount") shall become due and owing. The outstanding penalty amount must be received within 15 days of the date the missed installment was required to be paid pursuant to the above schedule.

Each such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers ("EFT"). If the payments are made by checks, then the checks shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

Each check shall be identified with a notation thereon: **In the Matter of W.R. Recycling Inc.** and shall bear thereon the Docket Number: **RCRA-02-2012-7106**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

1) Amount of Payment
2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
4) Federal Reserve Bank of New York ABA routing number: 021030004.
5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
6) Name of Respondent: **W.R. Recycling Inc.**
7) Case Number: **RCRA-02-2012-7106**.

Whether the payments are made by checks or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to:

Amy Chester
Assistant Regional Counsel
U.S. Environmental Protection Agency-Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Payment must be received pursuant to the provisions above.

a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

b. Further, if any payment is not received on or before the deadlines described in Paragraph 3 above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the deadline through the date of payment. In addition, a late payment handling charge of fifteen dollars ($15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the deadline in which a balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the deadlines in Paragraph 3.

c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f). Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

4. Respondent agrees to, and shall in accordance with the terms and conditions of this CA/FO, implement and perform a Supplemental Environmental Project ("SEP") that consists of the acquisition, operation, and maintenance of material recovery equipment and the construction and maintenance of a covered, bermed and reinforced concrete pad with appropriate oil- and fuel-resistant sealant in all joints, a drainage collection system and an oil water separator all to be used for a period of at least three years. To implement this SEP, Respondent shall spend a net expenditure of at least one hundred and thirty-three thousand dollars ($133,000), which shall include a minimum expenditure of one hundred and ten thousand dollars ($110,000) in capital costs on purchasing and installing the items specified in Paragraphs 5 and 7 below. (Creditable expenditures for this SEP shall not include any economic savings enjoyed by the Respondent attributable to equipment purchased as part of this SEP.)

5. Respondent shall purchase and obtain the following machinery and equipment within ninety days of the effective date of this CA/FO: a) mobile recovery unit with a built in containment system that removes and collects fluids from scrap vehicles; b) a refrigerant recovery unit; c) gear box drills for waste oil and fuels with collection funnels; and d) four mounted 500 gallon double walled above ground tanks.

6. Respondent shall train its employees on, and begin using machinery and equipment described in Paragraph 5 within one hundred and twenty (120) days of the effective date of this CA/FO.

7. Within one hundred and fifty (150) days of the effective date of the CA/FO, Respondent shall complete construction of a bermed, reinforced concrete pad at its facility with a) appropriate oil- and fuel-resistant sealant in all joints; b) a drainage collection system; c) an oil water separator; and d) a galvanized roof. Respondent shall thereafter conduct all facility scrap operations at the facility on the concrete pad, with all vehicles being processed beneath the galvanized roof.

8. Any hazardous wastes generated in the material recovery process shall be managed and disposed of pursuant to all applicable federal and commonwealth hazardous waste laws and regulations. Additionally, used oil, tires and other waste materials shall be recycled to the extent recycling is an available option for any collected waste material.

9. Respondent shall meet all applicable Clean Water Act requirements including the standards of the currently applicable NPDES non-point source general permit for Sector M - Automobile Salvage Yards and of any other applicable sector general permits for operations conducted at the facility (*e.g.*, Sector N - Scrap Recycling and Waste Recycling).

10. Within one hundred and eighty (180) days after the effective date of this CA/FO, Respondent shall submit a SEP Report in English to EPA for approval, to the addressee set forth in Paragraph 1 of this section, which shall:

a. Provide documentation of the timely purchase and delivery of all machinery and equipment referenced in Paragraph 5 above.

b. Provide documentation of the installation, operation, and maintenance of the all machinery and equipment referenced in Paragraph 5 above.

c. Provide documentation of employee training on the machinery and equipment required by Paragraph 5 above, including the submission of any written materials distributed or shown during the training, evidence documenting the cost of and payment for such training, and a list of personnel trained. All materials shall be submitted in English, except for the training materials to the extent such materials were originally written, and provided to employees, in Spanish.

d. Provide documentation of the construction, use and maintenance of the concrete pad as described in Paragraph 7 above.

e. Provide an acquisition cost report, with appropriate documentation, certified as accurate under penalty of perjury by a responsible corporate official that the sum of at least $110,000 (excluding savings) was spent by the Respondent in the purchase of the material recovery equipment and the construction of the concrete pad and other equipment and improvements as detailed in Paragraphs 5 and 7, respectively.

f. Provide a net expenditure report certified as accurate under penalty of perjury by a responsible corporate official itemizing the costs incurred to date in

the purchase, construction, installation, operation and maintenance of the machinery, equipment required under this SEP, including any shipping, training, labor, repair and electrical costs that would not have been incurred but for the implementation of the SEP as required herein.

11. No later than twelve, eighteen, twenty-four, thirty and thirty-six months from the effective date of this CA/FO, Respondent shall submit a separate SEP Report in English to EPA for approval, to the addressee set forth in Paragraph 1 of this section, which shall:

a. Provide documentation of the continued ownership, maintenance and operation of all machinery and equipment referenced in Paragraph 5 above, as well as documentation of continued training on such machinery and equipment;

b. Provide documentation of the maintenance and use of the concrete pad, including the ancillary systems and improvements, referenced in Paragraph 7 above;

c Review and detail the effectiveness of the mobile unit and other equipment in recovering materials, including the types and amounts of materials being recovered and the extent to which these materials are managed and/or disposed of as hazardous wastes and/or recycled. This review should address, but is not to be limited to, the following materials: used oil, tires, lead wheel weights, refrigerant, mercury, fuels and vehicle fluids such as coolant, brake and transmission fluids; and

d. Provide an expenditure report certified as accurate under penalty of perjury by a responsible corporate official itemizing each of the costs incurred to date (and not previously itemized in a report to EPA) in the implementation of the SEP, including the operation and maintenance of the equipment purchased under this SEP. Operational and maintenance costs may include any training expenditures, labor and/or electrical costs which were incurred solely as a result of implementing the SEP required herein.

12. Following its receipt of each SEP Report required above, EPA will either (a) accept the SEP Report or (b) reject the SEP Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (fifteen (15) days at a minimum), in which to answer EPA's inquiries and/or to correct any deficiencies in the SEP Report. EPA has the sole authority to determine whether costs expended are creditable to the SEP as herein required; (Deficiencies may include a determination by EPA that certain expenditures are not creditable to the SEP.)

13. Thirty-nine (39) months after the effective date of this CA/FO, Respondent shall submit a Final SEP Report in English to EPA for approval, to the addressee set forth in Paragraph 1 of this section above, which shall provide:

a. a summary and analysis of all of the information required under Paragraphs 10 and 11 covering the 36 month SEP period, *i.e.*, the entire three year period during which the SEP was implemented. This report shall include the type and amount of waste or material recovered from vehicles at the facility and the final disposition of the each type of waste or material (*i.e*, whether the waste or material was recycled or disposed of as a solid or hazardous waste).

b. An overall assessment of the value of the mobile system over the 36 month SEP period, including the number of days the unit was employed outside of the facility, the type and amount of waste or material recovered from vehicles located beyond the facility boundary, including the final disposition of the each type of waste or material, *i.e*, whether the waste or material was recycled or disposed of as a solid or hazardous waste.

c. A certification under penalty of perjury by a responsible corporate official that a net expenditure (*i.e.*, expenditures excluding any savings Respondent realized) of at least one hundred thousand and thirty-three dollars ($133,000) was spent in the implementation of this SEP, including a minimum net expenditure of one hundred and ten thousand dollars ($110,000) in capital costs over the 36 month SEP period. Documentation should be submitted verifying each of the net costs incurred in implementation of the SEP.

d. A certification under penalty of perjury by a responsible corporate official that the SEP was performed in accordance with the terms of this CA/FO.

14. Following receipt of the Final SEP Report described in the paragraph above, EPA will either (i) accept the Final SEP Report or (ii) reject the Final SEP Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (fifteen (15) days at a minimum), in which to respond to EPA's inquiries and/or to correct any deficiencies in the Final SEP Report.

15. Whether Respondent has complied with the terms of this CA/FO with regard to the successful and satisfactory implementation and/or operation of the SEP as herein required, including whether Respondent has made good faith and timely efforts to effect same, and whether costs expended are creditable to the SEP as herein required shall be solely determined by EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns in writing to Respondent and provide it with an opportunity to respond, and/or correct any of the deficiency(ies). If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

16. Respondent agrees that EPA (including authorized representatives of EPA) may inspect the facility during reasonable business hours in order to confirm that the SEP is being implemented properly and in conformity with the terms and conditions set forth in this CA/FO, provided, however, this paragraph is not intended or is to be construed to deny, limit or waive any right of EPA pursuant to applicable law, including the provisions of RCRA, to conduct an inspection of the facility for any purpose allowed by any applicable law.

17. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation and financing of the SEP, and documentation supporting information in the reports required to be submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA (including authorized representatives of EPA) access to such documentation and shall provide copies of such documentation to EPA within twenty (20) days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA, in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO, or two years after the completion of the SEP, whichever date is later.

18. The SEP to be implemented by Respondent pursuant to this CA/FO has been accepted by EPA solely for purposes of settlement of this administrative proceeding. Nothing in this CA/FO is intended or is to be construed as a ruling on or determination of any issue related to any federal, Commonwealth or local permit.

19. Any public statement, oral or written, in print, film or other media, made by the Respondent, or by any officer, employee or agent of the Respondent, that makes reference to the SEP under this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action initiated by the U.S Environmental Protection Agency against W.R. Recycling, Inc. under the Resource Conservation and Recovery Act."

20. Respondent hereby certifies that, as of the date of its authorized signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal, Commonwealth or local law, or other requirement including federal or Commonwealth rules. Respondent further certifies that, with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP set forth in this Consent Agreement by any agreement, grant, or as injunctive relief in this or any other suit, action or proceeding in any jurisdiction, and that Respondent had not instituted before October 2012 any of the work that is part of this SEP.

21. Respondent certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the aforementioned SEP and that Respondent in good faith believes that the SEP is in accordance with the provisions of EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 *Federal Register* 24796 (May 5, 1998).

22. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies, to the best of its knowledge and belief after reasonable and diligent inquiry, there is no such open federal financial transaction that constitutes funding or could be used to fund the same activity as the SEP, nor has the same activity as the SEP been described in an unsuccessful federal financial assistance transaction submitted to EPA within two years of the date of the execution of this settlement (unless the project(s) was barred from funding as statutorily ineligible). For the purpose of the certifications to be made pursuant to this paragraph, the term "open federal financial assistance transaction" refers to a grant, cooperative

agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

23. Respondent shall not use or expend any money received from the United States government, as a grant or otherwise, directly to finance, implement, perform and/or operate any aspect or any portion of the aforementioned SEP.

24. EPA may, in the exercise of its discretion, grant an extension of the date(s) of performance established in this CA/FO with regard to any of requirements for the SEP, if good cause exists for such extension(s). If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) days prior to any due date set forth in this CA/FO, or other deadline established pursuant to this CA/FO. Such extension, if any, shall be approved in writing.

25. Respondent shall be liable for stipulated penalties in the event Respondent fails to comply with the terms and conditions of this CA/FO including the performance, implementation, completion and operation of the SEP as set forth below in this paragraph:

a. If the SEP is not undertaken, Respondent shall pay a stipulated penalty of $110,000;

b. If EPA determines that the SEPs is satisfactorily completed, and Respondent has spent at least 90 percent of the total amount of money that it was required to expend for the SEP on expenditures that EPA determines are creditable toward the SEP (*i.e.* Respondent has spent $119,700 (90% of $133,000), provided EPA has determined said amount is creditable toward the SEP), Respondent shall not pay stipulated penalty for not having spent the full amount specified herein for the SEP.

c. If EPA determines that the SEP is satisfactorily completed and implemented but Respondent has spent less than 90 percent of the amount of money required to be spent for the SEP on expenditures that EPA determines are creditable toward the SEP, Respondent shall pay a stipulated penalty equal to two hundred (200) percent of the difference between the required amount to be spent ($133,000) and the amount Respondent actually spent on expenditures that EPA determines are creditable toward said SEP.

d. For any failure to timely submit any SEP Operational Report or any other report required by this CA/FO, Respondent shall pay a stipulated penalty in the amount of $150.00 for each day any such report is late up to the 30th day, and Respondent shall pay a stipulated penalty in the amount of $500 for each day any such report is thereafter late, and such penalty(ies) shall continue to accrue from the first date such report(s) is untimely until said report(s) is submitted to EPA

26. Unless Respondent provides EPA with a written explanation pursuant to the Paragraph below, all stipulated penalties are due and payable within thirty (30) days of Respondent's receipt of EPA's written demand for payment of the penalty(ies). The method of payment shall be in accordance with the provisions of Paragraph 3 of this section above. Interest and a late payment handling charge will be assessed in the same manner and in the same amounts as

specified in Paragraph 3, above. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

27. After receipt of a demand from EPA for stipulated penalty(ies) pursuant to the above paragraph, Respondent shall have twenty (20) days in which to provide EPA with a written explanation of why it believes that a stipulated penalty(ies) is not due and owing, or is not appropriate, for the cited violation(s) of the terms and conditions of this CA/FO (including any technical, financial or other information that Respondent deems relevant).

28. EPA may, in the exercise of its sole discretion, waive or reduce any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondent's submission pursuant to the preceding paragraph, EPA determines that Respondent has failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondent, in writing, of its decision regarding the stipulated penalty(ies). Respondent shall then, within thirty (30) days of receipt thereof, pay the stipulated penalty amount(s) indicated in EPA's notice. (EPA may also in its discretion, *sua sponte*, decide not to demand stipulated penalties.)

29. Failure of Respondent to pay any stipulated penalty(ies) demanded by EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other action provided by applicable law.

30. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

31. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

32. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.

33. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or EPA's Findings of Fact or Conclusions of Law contained within these documents.

34. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to

discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

35. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, commonwealth or local law, regulation or permit.

36. Each party shall bear its own costs and fees in this matter.

37. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.

38. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

39. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:

W.R. Recycling Inc.

BY: _____

NAME: Wildemar Torres

TITLE: Owner

DATE: May 16, 2014

_____
Jose J. Lugo Toro, Esq.

COMPLAINANT:

United States Environmental Protection Agency – Region 2

BY: _____

NAME: Dore LaPosta

TITLE: Director, Division of Enforcement & Compliance Assistance

DATE: JUNE 10, 2014

FINAL ORDER
Docket Number: RCRA-02-2012-7106

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.

Judith A. Enck

Judith A. Enck
Regional Administrator
EPA-Region 2

DATE: ~~6-9~~ 6·11·14