

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE AND INSPECTION**

In Re: WAL, Inc.

FILE No.: 2010-77-HW
AAD No.: 11-008/WME

CONSENT AGREEMENT

A. *INTENT & PURPOSE*

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and WAL, Inc. (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by RIDEM on April 1, 2011.

B. *STIPULATED FACTS*

- (1) WHEREAS, the subject property is located at 438 West Fountain Street in the city of Providence, Rhode Island and includes a building that is operated as an auto parts warehouse and retail sale facility (the "Facility").
- (2) WHEREAS, the Respondent operates the Facility.
- (3) WHEREAS, on April 1, 2011, the RIDEM issued a NOV to the Respondent alleging certain violations of Title 40 of the Code of Federal Regulations ("40 CFR") and the RIDEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations") at the Facility .
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Respondent complied with the Order section of the NOV.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (7) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the 40 CFR and the RIDEM's Hazardous Waste Regulations.

C. **AGREEMENT**

- (1) **JURISDICTION** – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) **FORCE and EFFECT** – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) **APPLICATION** – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) **PENALTY** – Respondent shall pay to RIDEM the sum of Twenty-One Thousand Two Hundred and Fifty Dollars (\$21,250.00) in administrative penalties assessed as follows:
 - (a) **Upon execution of this Agreement by the Respondent**, the Respondent shall pay to RIDEM Five Thousand Four Hundred and Fifty Dollars (\$5,450.00).
 - (b) The remainder of the penalty, **Fifteen Thousand Eight Hundred Dollars (\$15,800.00)**, shall be paid to RIDEM in two payments and in the form of a Supplemental Environmental Project (“SEP”) as follows:
 - (i) **Within sixty (60) days of the execution of this Agreement**, the Respondent shall pay to the RIDEM the sum of Five Thousand Four Hundred Dollars (\$5,400.00).
 - (ii) **Within one hundred twenty (120) days of the execution of this Agreement**, the Respondent shall pay to the RIDEM the sum of Five Thousand Four Hundred Dollars (\$5,400.00).
 - (iii) The SEP involves the payment of Five Thousand Dollars (\$5,000.00) to sponsor a Rhode Island State House Recycling Awards event that is organized by the Rhode Island Schools Recycling Club (described under the heading *The RI School Environmental Supporter* in Attachment A, attached hereto and incorporated herein). The payment shall be made to the Environment Council of Rhode Island Education Fund, Inc., a 501(c)(3) non profit organization (the “SEP Payment”). The SEP Payment shall be in the form of a certified check, cashiers check, or money order, payable to the Environment Council of Rhode Island Education Fund, Inc. Upon execution of the Agreement by the Respondent, the SEP Payment shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection

235 Promenade Street
Providence, RI 02908-5767

- (c) Penalties that the Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (d) In the event that the Respondent fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondent will be in default. If the payment is not received within thirty (30) days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of twelve percent (12%) per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$

- (e) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Environmental Response Fund Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (3) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.

- (4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (5) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

RIDEM: Tracey D’Amadio Tyrrell
Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7407

With copy to:
Richard M. Bianculli, Jr., Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

RESPONDENT: John T. McCaffrey, Esq.
McCaffrey & McCaffrey, LLP
1380 Warwick Avenue
Warwick, RI 02888
(401) 463-7444

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (7) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least fifteen (15) days prior to the prescribed deadline.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For WAL, Inc.:

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of WAL, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind WAL, Inc. to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2013, before me personally appeared _____, the _____ of WAL, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of WAL, Inc., and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of WAL, Inc.

Notary Public
My Commission Expires: _____

For the State of Rhode Island Department of
Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____