

SETTLEMENT AGREEMENT & RELEASE

This Settlement Agreement & Release (Agreement) is entered into by and between the Department of Resources Recycling and Recovery (Department) and USA Waste of California, Inc. dba Sacramento Recycling and Transfer Station (USA Waste). The Department and USA Waste are each sometimes referred to herein as "Party" or collectively as "Parties." This Agreement shall become effective as of the last date of execution below (Effective Date).

RECITALS

- A. WHEREAS, the Department is responsible for administration of the California Beverage Container Recycling and Litter Reduction Act (Public Resources Code § 14500 et seq.), including but not limited to, managing the California Beverage Container Recycling Fund (Fund), adopting regulations, certifying and registering program participants, inspection, auditing, investigation, filing and prosecuting enforcement actions, and imposing discipline;
- B. WHEREAS, USA Waste is a Delaware corporation licensed to do business in California. It is the sole owner and operator of Sacramento Recycling & Transfer Station (SRTS), a certified processor with the certification number PR149690.001;
- C. WHEREAS, on February 16, 2016, the Department issued an accusation entitled: "In the Matter of the Accusation Against: USA Waste of California, Inc., dba Sacramento Recycling & Transfer Station (PR149690.001), DRRR Case No. 2016-001-BCR" (Accusation);
- D. WHEREAS, a formal hearing on the Accusation is scheduled before the Office of Administrative Hearings on October 15, 2018 through October 18, 2018 and October 22, 2018 through October 25, 2018;
- E. WHEREAS, the Parties have engaged in settlement negotiations and now wish to resolve and settle all of the allegations and monetary claims for the time periods set forth in the Accusation (collectively, the "Claims").

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Department and USA Waste agree as follows:

AGREEMENT

1. Settlement. To resolve the Claims, USA Waste shall pay the amount of One Million One Hundred Thousand Dollars (\$1,100,000) (Settlement Amount) in full and final settlement of the allegations contained in the Accusation. USA Waste shall satisfy payment of the Settlement Amount by:
 - a. Delivering to the Department, payment in the amount of One Million Sixty Thousand Dollars (\$1,060,000) within twenty (20) business days after the Effective Date; and
 - b. Completing the Supplemental Environmental Project (SEP) as described in Section 3 below.
 - c. All payments made hereunder shall be delivered to the Department at the following address:

Department of Resources Recycling and Recovery
Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
Attn: Jeff Diamond, Senior Staff Counsel
2. Characterization of Settlement. The Settlement Amount (\$1,100,000) consists of the following:
 - a. Restitution. Eight Hundred Thirty-Nine Thousand Three Hundred Eighty-Nine Dollars (\$839,389) in restitution. For purposes of Section 162(f)(2)(A) of the Internal Revenue Code, this amount “constitutes restitution for damage or harm which was or may be caused by the violation of any law or the potential violation of any law...”
 - b. Penalties. Eighty Thousand Dollars (\$80,000) in penalties associated with the Accusation.
 - c. Costs. One Hundred Eighty Thousand Six Hundred Eleven Dollars (\$180,611) in costs associated with the Accusation.
3. Supplemental Environmental Project. USA Waste agrees to expend up to Forty Thousand Dollars (\$40,000) for a Supplemental Environmental Project (SEP Funds), as defined in Public Resources Code § 71118, and further described on the California Environmental Protection Agency website (www.https://calepa.ca.gov/supplemental-

environmental-projects/). The SEP funding will be deducted from the penalties paid to the Department, set forth in paragraph 2(b), above, subject to the following:

- a. USA Waste will have sixty (60) calendar days from the Effective Date to submit and obtain approval of a SEP from the Department. If approved, the SEP must be implemented within ninety (90) calendar days of the date the Department notifies USA Waste in writing that the proposed SEP is approved, unless the Department agrees in writing to allow for a longer period for implementing the SEP. Any portion of the SEP Funds not expended by USA Waste on the SEP shall be paid to the Department within thirty (30) calendar days after implementation of the SEP. USA Waste may select more than one SEP to fund.
 - b. If the SEP is not approved within sixty (60) calendar days of the Effective Date, or such later date as the Department allows in its absolute discretion, the SEP Funds must be paid to the Department within thirty (30) calendar days of the expiration of the sixty (60) calendar day approval period.
4. Release. Except for the executory provisions of this Agreement, which survive and remain enforceable, the Department hereby releases Respondents and their respective owners, officers, directors, partners, managers, and employees from any and all claims the Department had or may have had arising out of the allegations and monetary claims for the time periods set forth in the Accusation. Nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any violations of law other than those that are described in the Accusation. Respondents hereby waive any right of appeal and all claims, rights, and causes of action of every kind in any forum they have or may have against the Department arising out of and resulting from the allegations and monetary claims for the time periods set forth in the Accusation.
5. Civil Code § 1542. The Department acknowledges that it has read and understands Civil Code section 1542 (Section 1542) which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Department waives Section 1542 as it applies to the allegations and monetary claims for the time periods set forth in the Accusation.

6. Dismissal. Within 10 days of receipt by the Department of payment of the Settlement Amount by USA Waste, the Department will file a Notice of Settlement and Request for Dismissal with Prejudice with the Office of Administrative Hearings.
7. No Admission. This Agreement is the direct result of a compromise of disputed allegations and claims. There has been no final adjudication of the merits of any allegation or monetary claim for the time periods set forth in the Accusation. No provision of this Agreement shall be construed as an admission of any liability of any kind by USA Waste. This Agreement shall not be admissible as evidence in any future dispute between the Parties except in an action to enforce the terms of this Agreement.
8. Nothing in this Agreement shall limit or vitiate the Department's powers, rights, or responsibilities under the Act or Regulations, or under any other law of the State of California, as they may be amended from time to time.
9. General Provisions.
 - a. Integration. This Agreement constitutes the entire agreement and understanding between the Parties and fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between the Parties concerning the Accusation.
 - b. Amendment. This Agreement may be modified or amended only by a written instrument executed by each of the Parties.
 - c. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by the laws of the State of California.
 - d. Parties Represented by Counsel. Each Party acknowledges that it has been represented in negotiations for settlement and preparation of this Agreement by counsel of its choosing, and that each of the Parties has read this Agreement and has had it fully explained by its own counsel, and is fully aware of its contents and of its legal effect.
 - e. Necessary Actions. Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
 - f. Notices. Any and all notices or other correspondence which the Parties are required or desire to serve upon or deliver to the other Party shall be in writing and shall be deemed delivered three business days after deposit in the United States mail addressed to the party as follows:

If to the
Department: Department of Resources Recycling and Recovery
Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
Attention: Jeff Diamond, Senior Staff Counsel

If to
USA Waste: Waste Management Legal Department
222 S. Mill Avenue, Suite 333
Tempe, AZ 85281
Attention: General Counsel

- g. Mutual Drafting. This Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The Parties acknowledge that this Agreement documents a negotiated agreement and it shall not be construed or interpreted in favor of either Party due to the fact that one of the Party's attorneys drafted this Agreement.
- h. Severability. If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, the Parties will attempt to agree upon a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid, and enforceable.
- i. Section and Paragraph Headings. Section and paragraph headings used in this Agreement are for convenience only, are not part of the Agreement, and shall not affect any of the terms hereof.
- j. Attorneys' Fees and Costs. Except as may be provided herein, each Party shall bear its own attorneys' fees and costs incurred in relation to the negotiation and preparation of this Agreement. In the event of any controversy, claim, or dispute relating to this Agreement, or the performance or nonperformance of any of the provisions thereof, in which the services of an attorney, mediator, arbitrator, or expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including, without limitation, reasonable attorneys' fees, costs, and expert fees, in addition to all other amounts awarded by the court, arbitrator, or mediator.
- k. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the Parties had all signed the same document. All counterparts shall be construed together and shall constitute one Agreement.

- l. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever.
- m. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- n. Authority to Execute. Each person signing below warrants that he or she has full authority to execute this Agreement on behalf of the Party on whose behalf that person is signing.

WHEREFORE, the Parties confirm this as their Agreement and agree to fully and completely comply with the terms and conditions hereto and to be bound thereby.

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

By:



Scott Smithline
Director

Dated:

8-20-18

APPROVED AS TO FORM

By:



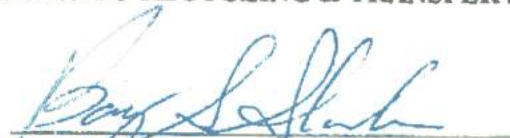
Jeffrey A. Diamond
Senior Staff Counsel

Dated:

8/16/2018

**USA WASTE OF CALIFORNIA, INC., dba
SACRAMENTO RECYCLING & TRANSFER STATION**

By:


Barry S. Skolnick
President

Dated:

8/16/2018

APPROVED AS TO FORM

By:


Alexis K. Stevens,
Counsel for USA Waste of California, Inc.

Dated:

8/16/2018