

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: J.R. Vinagro Corporation
Shun Properties LLC
Joseph R. Vinagro Properties, LLC
Joseph R. Vinagro

File Nos.: FW C02-0301, FW C06-0361,
WP 03-01, and SW 2011-28

AAD Nos.: 11-008/FWE and 12-002/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 (the "RIDEM") and J.R. Vinagro Corporation, Shun Properties LLC, Joseph R. Vinagro Properties, LLC, Joseph R. Vinagro, and A-Street Realty LLC (collectively, the "Respondents"). 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 actions set forth in a Notice of Violation ("NOV") No. OC&I/FW/C02-0301 and OC&I/WP/03-01 issued to Joseph R. Vinagro by the RIDEM on January 12, 2004 (the "January 2004 NOV"), a NOV No. FW C06-0361 issued to Joseph R. Vinagro Properties, LLC by the RIDEM on November 4, 2011 (the "November 2011 NOV"), and a NOV No. SW2011-28 issued to J.R. Vinagro Corporation and Shun Properties LLC by the RIDEM on December 29, 2011 (the "December 2011 NOV").

B. STIPULATED FACTS

- (1) WHEREAS, the properties that are the subject of the January 2004 NOV are located on Assessor's Plat 33, Lot 28 ("Plat 33/28") and Assessor's Plat 43, Lot 66 ("Plat 43/66"), in the town of Johnston, Rhode Island;
- (2) WHEREAS, the property that is the subject of the November 2011 NOV is located on Assessor's Plat 30, Lot 10 ("Plat 30/10") in the town of Johnston, Rhode Island;
- (3) WHEREAS, the properties that are the subject of the December 2011 NOV are located at 116 Shun Pike, Assessor's Plat 32, Lots 11, 12 and 17 ("Plat 32/11,12 & 17") in the town of Johnston, Rhode Island;
- (4) WHEREAS, A. Street Realty LLC owns Plat 33/28;

- (5) WHEREAS, the Rhode Island Resource Recovery Corporation owns Plat 43/66;
- (6) WHEREAS, Joseph R. Vinagro Properties LLC owns Plat 30/10;
- (7) WHEREAS, Shun Properties, LLC owns Plat 32/11, 12 & 17;
- (8) WHEREAS, J. R. Vinagro Corporation operates a facility at Plat 32/11, 12 & 17;
- (9) WHEREAS, on January 12, 2004, the RIDEM issued the January 2004 NOV to Joseph R. Vinagro (“Vinagro”) alleging certain violations of Rhode Island’s Freshwater Wetland Act, R.I. Gen. Laws Section 2-1-21, Rhode Island’s Water Pollution Act, Chapter 46-12, RIDEM’s Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act, RIDEM’s Water Quality Regulations, and RIDEM’s Regulations for the Rhode Island Pollutant Discharge Elimination System;
- (10) WHEREAS, Vinagro did not request an administrative hearing to contest the January 2004 NOV;
- (11) WHEREAS, on February 14, 2011, the RIDEM issued a license to J.R. Vinagro Corporation (“Vinagro Corporation”) to operate a construction and demolition debris (“C&D”) processing facility and a transfer station on Plat 32/11, 12 & 17. One condition of the license required Vinagro Corporation to construct an enclosed building for the operations (the “Enclosed Building”);
- (12) WHEREAS, on November 4, 2011, the RIDEM issued an NOV to Joseph R. Vinagro Properties LLC (“Vinagro Properties”) alleging certain violations of Rhode Island’s Freshwater Wetland Act, R.I. Gen. Laws Section 2-1-21 and RIDEM’s Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act;
- (13) WHEREAS, Vinagro Properties timely requested an administrative hearing to contest the November 2011 NOV;
- (14) WHEREAS, on December 29, 2011, the RIDEM issued an NOV to Vinagro Corporation and Shun Properties, LLC (“Shun Properties”) alleging certain violations of RIDEM’s Solid Waste Regulations;
- (15) WHEREAS, Vinagro Corporation and Shun Properties timely requested an administrative hearing to contest the December 2011 NOV;
- (16) WHEREAS, on June 6, 2013, Vinagro Properties submitted a plan entitled “Wetland Restoration and Mitigation Overview Plan” for Plat 30/10 (the “Plainfield Pike Wetland Restoration Plan”) and a plan entitled “Wetland Mitigation and Overview Plan – Revised” for Plat 33/28 (the “Shun Pike Wetland Restoration Plan”), copies of which are attached hereto and incorporated herein as Attachment A (collectively, the “Wetland Restoration Plans”);

- (17) WHEREAS, the RIDEM has approved the Wetland Restoration Plans;
- (18) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the November 2011 NOV and the December 2011 NOV and/or proceeding to Superior Court to enforce the January 2004 NOV, and to effect a timely and amicable resolution of the NOVs, the RIDEM and the Respondents hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOVs; and
- (19) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's Freshwater Wetland Act, R.I. Gen. Laws Section 2-1-21, Rhode Island's Water Pollution Act, Chapter 46-12, RIDEM's Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act, RIDEM's Water Quality Regulations, RIDEM's Regulations for the Rhode Island Pollutant Discharge Elimination System, and RIDEM's Solid Waste Regulations.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondents.
- (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 Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
- (a) By October 1, 2013, the Respondents shall complete all work associated with the construction of the Enclosed Building. Vinagro Corporation and Shun Properties agree that, as of that date, except for processing tree waste, processing coated masonry and outside storage of materials as set forth in the application for the Enclosed Facility, all processing activities associated with the C&D processing facility and the transfer station shall take place within the Enclosed Building.
- (b) By May 31, 2014, the Respondents shall complete all of the work in accordance with the Plainfield Pike Wetland Restoration Plan.

- (c) By May 31, 2014, the Respondents shall complete all of the work in accordance with the Shun Pike Wetland Restoration Plan.
- (d) Penalty – Respondents shall pay to the RIDEM the sum of One Hundred and Nineteen Thousand Dollars (\$119,000.00) in settlement of the NOVs as follows:
 - (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to the RIDEM the sum of Thirteen Thousand Dollars (\$13,000.00).
 - (ii) The Respondents shall fund a Supplemental Environmental Project (“SEP”) totaling no more than Twenty Thousand Dollars (\$20,000) for various Earth Day clean-up projects undertaken by independent third party organizations throughout Rhode Island in calendar year 2014 (the “Earth Day SEP”). Projects shall be solicited and selected for funding by a panel consisting of one person from RIDEM, one person selected by the Respondents, and one person from an independent organization selected jointly by RIDEM and the Respondents. Maximum funding for any single project shall be limited to two thousand dollars (\$2,000). The Respondents and RIDEM can, at their individual discretion, be openly recognized as sponsors, supporters, and/or partners in the projects selected. In the event that less than \$20,000 in applications for funding are received in 2014, the Respondents shall be deemed to have met their obligations in this paragraph by funding the applications submitted that are approved by the committee specified above and shall have no further obligations hereunder. The Respondents shall be given a credit of Twenty Thousand Dollars (\$20,000) for the Earth Day SEP (the “Earth Day SEP Credit”).
 - (iii) The Respondents shall complete a second SEP consisting of placing a Conservation Easement on portions of Plat 33/28 identified as “Approximate Area Subject to Environmental Land Use Restriction” as shown on the Shun Pike Wetland Restoration Plan (the “Conservation Easement SEP”). The Respondents shall be given a credit of Eighty Six Thousand Dollars (\$86,000.00) for the Conservation Easement SEP (the “Conservation Easement SEP Credit”). The Conservation Easement SEP shall be completed as follows:
 - (1) Within thirty (30) days of execution of this Agreement, the Respondents shall submit to RIDEM a metes and bounds survey of the area that encompasses the Conservation Easement, prepared by a licensed land surveyor (the “Conservation Easement Area”).
 - (2) The Conservation Easement Area is subject to RIDEM’s review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a

notification of deficiencies, the Respondents shall submit to RIDEM a modified Conservation Easement Area to correct the deficiencies.

- (3) The Conservation Easement shall be executed by A. Street Realty LLC, in favor of RIDEM, and shall be in the form attached hereto as Attachment B, and shall be subject to review and approval by the State Properties Committee.
 - (4) Within fourteen (14) days of approval of the Conservation Easement by the State Properties Committee, A. Street Realty LLC shall record the Conservation Easement in the town of Johnston land evidence records and provide a copy of the recorded Conservation Easement to RIDEM. The recording shall be at the sole expense of A. Street Realty LLC.
- (iv) The amounts that the Respondents agree to pay in this Agreement are payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (v) All payments shall be in the form of a certified check, cashiers check, or money order and be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

Payment of the Thirteen Thousand Dollars (\$13,000.00) shall be made payable to the "R.I. General Treasurer – Environmental Response Fund Account".

- (vi) If the Respondents fail to timely complete the SEPs described in Paragraphs C(4)(d)(ii) and (iii) above, RIDEM shall notify the Respondents that RIDEM intends to rescind the credit given for the SEP. Within fourteen (14) days of Respondents' receipt of written notification by RIDEM that RIDEM intends to rescind the SEP Credit, the Respondents shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If the Respondents fail to complete the SEP or do not demonstrate good cause for the delay within said fourteen (14) days, the Respondents shall, within ten (10) days of the Respondents' receipt of a written notification from RIDEM, submit to the RIDEM a check in the amount of the credit given for the SEP after which the Respondents shall be under no further obligation to complete the SEP.
- (vii) If the State Properties Committee does not approve the Conservation Easement as proposed or a revised version that is mutually agreeable to Respondents and RIDEM, within thirty (30) days of receipt in writing from the RIDEM that the State Properties Committee did not approve the

Conservation Easement and will not approve a revised version, the Respondents shall either propose another SEP to RIDEM for consideration (the "New SEP Proposal") or pay the amount of the Conservation Easement SEP Credit and be under no further obligation to complete the SEP.

(viii) The New SEP Proposal is subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondents shall submit to RIDEM a revised New SEP Proposal to correct the deficiencies (the "Revised New SEP Proposal").

(ix) If the Respondents fail to timely submit a Revised New SEP Proposal as described in Paragraph C(4)(d)(viii) above, the Respondents shall, within ten (10) days of the Respondents' receipt of a written notification from RIDEM, pay the amount of the Conservation Easement SEP Credit and be under no further obligation to complete the SEP.

(5) RIGHT OF ACCESS – A. Street Realty, LLC, Vinagro Properties and Shun Properties (collectively, the "Owners") shall provide to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to Plat 33/28, Plat 30/10, and Plat 32/11,12 & 17 (the "Properties") at all reasonable times for the purpose of monitoring compliance with this Agreement. The Owners shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Properties shall provide the same access and cooperation as long as they control the Properties. The Owners shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Properties as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Properties or an interest in the Properties shall include this right of access provision and shall otherwise be consistent with the terms of this Agreement.

(6) NON-ADMISSION OF LIABILITY – The signing of this Consent Agreement is for settlement purposes only and does not constitute an admission by the Respondents that the law or regulations have been violated as alleged in the NOV's.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the January 2004 NOV, November 2011 NOV and December 2011 NOV. Upon the Respondents’ successful completion of all requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the November 2011 NOV and December 2011 NOV to the Respondents for recording. The recordings shall be at the sole expense of the Respondents.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with any of the items specified in Paragraphs C (4)(a), (b) and (c) of this Agreement, the RIDEM shall give written notice to the Respondents of such alleged non-compliance. Unless a longer period is allowed by RIDEM, Respondents shall have thirty (30) calendar days from the date such notice is received to cure the alleged non-compliance. If the Respondents fail to cure the alleged non-compliance within the cure period, the Respondents shall pay a stipulated penalty of One Hundred Dollars (\$100.00) per day for each and every day following the cure period during which the noncompliance continues. RIDEM may, for good cause shown, defer or reduce such penalty. RIDEM shall not impose such stipulated penalties for acts or omissions beyond the Respondents’ control. The payment of a penalty in accordance with this paragraph shall not preclude the RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondents of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.
- (4) 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, the 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), except that the RIDEM agrees not to take additional enforcement actions against the Respondents for matters that were or could have been alleged in the NOVs, provided that the Respondents fully comply with this Consent Agreement. This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondents may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondents from liability arising from future activities, as of the date of execution of this Agreement.

- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOVs.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

David E. Chopy, Chief

RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7400

Susan Forcier, Esquire

RIDEM Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
(401) 222-6607

Kristen Sherman, Esquire

Alder Pollock & Sheehan, PC
One Citizens Plaza, 8TH Floor
Providence, RI 02903
(401) 274-7200

Dana Zewinski

J.R. Vinagro Corporation
2208 Plainfield Pike
Johnston, RI 02919
(401) 943-7100

- (a) At any time prior to full compliance with the terms of this Agreement, the Owners agree to notify the RIDEM in writing of any change in ownership of the Properties, and provide the name and address of the new owner(s). Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.
- (b) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) 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 the RIDEM in writing at least ten (10) days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.

(10) 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 Joseph R. Vinagro:

By: _____ (Print Name)

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2013, before me personally appeared Joseph R. Vinagro to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

Notary Public
My Commission Expires: _____

For J.R. Vinagro Corporation:

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of J.R. Vinagro Corporation, I hereby aver that I am authorized to enter into this Agreement and thereby bind J.R. Vinagro Corporation 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 J.R. Vinagro Corporation, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of J.R. Vinagro Corporation, 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 J.R. Vinagro Corporation.

Notary Public
My Commission Expires: _____

For Shun Properties LLC:

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Shun Properties LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Shun Properties LLC 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 Shun Properties LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Shun Properties LLC, 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 Shun Properties LLC.

Notary Public
My Commission Expires: _____

For Joseph R. Vinagro Properties LLC:

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Joseph R. Vinagro Properties LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Joseph R. Vinagro Properties LLC 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 Joseph R. Vinagro Properties, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Joseph R. Vinagro Properties, LLC, 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 Joseph R. Vinagro Properties, LLC.

Notary Public
My Commission Expires: _____

For A. Street Realty LLC:

By: _____ (Print Name)
Its: _____ (Title)
Dated: _____

In my capacity as _____ of A. Street Realty, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind A. Street Realty, LLC 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 A. Street Realty, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of A. Street Realty, LLC, 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 A. Street Realty, LLC.

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: _____