

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION**

**RE: VINAGRO, LOUIS L., JR. and
NEW ENGLAND ECOLOGICAL
DEVELOPMENT, INC.
NOTICE OF VIOLATION OC&I/SW 02-001**

AAD No. 02-012/WME

CONSENT AGREEMENT

A. INTENT & PURPOSE:

This Agreement is entered into by and between the Rhode Island Department of Environmental Management (“RIDEM”) Office of Compliance & Inspection (“OC&I”) and Louis L. Vinagro, Jr. (the “Respondent”) (collectively, the “Parties”). This Agreement is entered into in accordance with §§ 42-17.1-2 *et seq.* of the Rhode Island General Laws of 1956 (“R.I.G.L.”) for the purpose of resolving the administrative enforcement action described in Paragraph B(3) below.

B. STIPULATED FACTS:

- (1) WHEREAS, the subject property is located at 23 Green Hill Road in Johnston, Rhode Island, also known as Assessor’s Plat 32, Lots 14, 21, 22, and 25 (the “Property”).
- (2) WHEREAS, the Property was formerly operated at various times by the Respondents as a composting operation, transfer station, wood recovery facility, an unlicensed sanitary landfill, and a farming operation.
- (3) WHEREAS, the Property is the subject of several RIDEM Notices of Violation (“Prior NOVs”) issued to Respondent and/or New England Ecological Development (“NEED”), and other civil actions alleging violations of R.I.G.L. §§ 23-18.9-1 *et seq.* (the “Refuse Disposal Act”). Except as provided in Paragraph (D)(4), this Consent agreement resolves only the issues raised in the Notice of Violation dated August 2, 2002 (File No. OC&I/SW 02-001) (the “NOV”).
- (4) WHEREAS, Respondent denied the allegations in the NOV and timely requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Parties agree that the NOV is the only remaining RIDEM enforcement action against Respondent.

- (6) WHEREAS, RIDEM and 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, RIDEM finds that this Consent Agreement is a reasonable and fair settlement of the actions and adequately protects the public interest in accordance with the Refuse Disposal Act.

C. AGREEMENT:

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final administrative order pursuant to the Administrative Procedures Act, R.I.G.L. §§42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. §§42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, Respondent and his successors and assigns, including any lessees, and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT – Respondent agrees to have the fully executed Consent Agreement recorded in the land evidence records of the Town of Johnston, Rhode Island within ten (10) business days after he receives the fully executed Consent Agreement from RIDEM. Respondent shall ensure that the original Consent Agreement is recorded and a copy is returned to RIDEM at Respondent’s sole expense.
- (5) NON-ADMISSION OF LIABILITY – The signing of this Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law or regulations have been violated as alleged in the NOV.
- (6) CONDITIONS –
 - a) Respondent agrees to implement the Monitoring Plan for the Property that is attached hereto as Exhibit A, which is incorporated by reference herein.
 - b) In the event that the monitoring being undertaken in accordance with Paragraph (C)(6)(a) and Exhibit A reveals any exceedances of any of the outlined constituents of concern, Respondent agrees to immediately notify RIDEM of such findings and to immediately begin any necessary and appropriate remedial actions to resolve such exceedances in accordance with the Rules and Regulations for the Solid Waste Management Facilities and the Rules and Regulations for the

Investigation and Remediation of Hazardous Materials Releases.

- c) Respondent agrees to maintain a stable slope on the exterior berms. In the event that Respondent, proposes to make any changes to the existing slope of the berms, such changes shall not be made without the prior written approval of RIDEM, which approval shall not be unreasonably withheld.
- (7) PENALTY – The penalty contained within the Prior NOV's shall be held in abeyance. If the Respondent complies with Paragraph C(6)(a) and (b) of this Agreement, the penalty contained within the Prior NOV's shall be waived.
- (8) RIGHT OF ACCESS – Respondent provides to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. The Respondent shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Property as of the effective date of this Agreement, and shall ensure that said parties shall provide the same access. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property shall include this right of access provision and shall otherwise be consistent with the terms of this Agreement. Said right of access shall automatically terminate at the expiration of the term of the Monitoring Plan as set forth on Exhibit A hereto.

D. COMPLIANCE:

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the Prior NOV's. Upon execution of this Consent Agreement, RIDEM shall issue a Release and Discharge of the NOV to Respondent for recording in the Land Evidence Records of the Town of Johnston. Within ten (10) days of recordation, Respondent shall provide a copy of the recorded Release to RIDEM. Respondent agrees that the recording of the documents will be done at his sole expense.
- (2) FAILURE TO COMPLY – In the event that Respondent fails to comply with the conditions specified in Paragraph C (6) (a) and (b) of this Agreement, and after no less than thirty (30) days have elapsed after notice by RIDEM that RIDEM considers Respondent to be in material non-compliance, if Respondent has failed to cure any non-compliance within that thirty (30) day period, Respondent shall pay a stipulated penalty of one hundred dollars (\$100) per month for each and every month during which the non-compliance continues, except that RIDEM may, for good cause shown, waive, defer or reduce such penalty. Approval of any such waiver, deferral or reduction of such penalty shall not be unreasonably withheld. RIDEM shall not impose such penalty for minor delays, de minimus non-compliance with this Agreement or circumstances caused by circumstances outside of Respondent's control.

- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for 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 the 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.G.L. §§ 42-17.1-2(21), except that RIDEM agrees not to take additional enforcement actions against Respondent, his successors and assigns, including any present or future owners, lessees, and all persons, firms and corporations acting under, through and for Respondent, for matters pertaining to the Property up to and including the date of execution of this Agreement, including matters that were alleged or could have been alleged in the Prior NOVs and the NOV, provided that Respondent fully complies with the terms of this Agreement. This Agreement shall not restrict any right to hearing or other right available by statute or regulation that Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – Except as otherwise provided above, this Agreement shall not operate to shield Respondent from liability arising from future violations or activities, as of the date of execution of this Agreement.
- (6) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:
- David Chopy, Chief, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908. Tel. (401) 222-4700, ext. 7400.
 - Susan Forcier, Esq. RIDEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908. Tel. (401) 222-6607.
 - Barbara Grady, Esq., 975 Smith Street, Providence, RI 02908. Tel. (401) 351-4800

At any time prior to completion of the monitoring described in Exhibit A, Respondent agrees to notify RIDEM in writing of any change in ownership of the Property, 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.

- (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.

Respondents:

Louis L. Vinagro, Jr.

Dated: _____

In _____, on this _____ day of _____, 2013, before me personally appeared Louis L. Vinagro, Jr., to me known and known by me to be the party executing the foregoing instrument on his own behalf, and he acknowledged said instrument by him executed, to be his free act and deed .

Notary Public
Notary Number: _____
My Commission Expires: _____

For New England Ecological Development, Inc.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

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

In _____, on this _____ day of _____, 2013, before me personally appeared _____, the _____ of New England Ecological Development, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of New England Ecological Development, 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 New England Ecological Development, Inc.

Notary Public
Notary Number: _____
My Commission Expires: _____

*For the State of Rhode Island Department of
Environmental Management*

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

EXHIBIT A

MONITORING PLAN