

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: J.R. Vinagro Corporation
Shun Properties, LLC**

FILE NO.: SW 2011-28

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The subject property is located at 116 Shun Pike, Assessor’s Plat 32, Lots 11, 12 and 17 in the town of Johnston, Rhode Island (the “Property”). The Property includes a construction and demolition debris processing facility and transfer station (the “Facility”).
- (2) Shun Properties, LLC owns the Property.
- (3) J.R. Vinagro Corporation operates the Facility.
- (4) On 29 July 2010 the J.R. Vinagro Corporation submitted to the DEM an application to operate the Facility (the “License Application”).
- (5) On 14 February 2011 the DEM approved the License Application (the “License”).
- (6) The License requires J.R. Vinagro Corporation to:
 - (a) Conduct all activities at the Facility within an enclosed building (the “Enclosed Building”).
 - (b) Submit to the DEM a final set of construction and engineering plans for the Enclosed Building prior to the start of construction of the Enclosed Building (the “Design Plans”).
 - (c) Submit to the DEM details and specifications of the final types of construction and demolition debris processing equipment to be used at the Facility prior to the start of construction of the Enclosed Building (the “Design Specifications”).

- (d) Conduct quarterly air monitoring and submit a report of results to the DEM within forty five (45) days of the monitoring event.
 - (e) Conduct quarterly surface water monitoring and submit a report of results to the DEM within forty five (45) days of the monitoring event.
- (7) On 26 May 2011, 15 July 2011 and 23 September 2011, the DEM inspected the Facility. The inspections revealed the following:
- (a) The Enclosed Building was not present.
 - (b) Construction and demolition debris (“C&D”) was being pulverized.
 - (c) C&D was being screened and processed.
- (8) On 21 December 2011, the DEM inspected the Facility. The inspection revealed that construction had begun on the Enclosed Building.
- (9) The Respondents have not submitted the Design Plans or the Design Specifications to the DEM.
- (10) The Respondents failed to conduct air monitoring for the first and second quarters of calendar year 2011 as evidenced by the failure to submit reports to the DEM.
- (11) The Respondents failed to conduct surface water monitoring for the first and second quarters of calendar year 2011 as evidenced by the failure to submit reports to the DEM.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **The DEM’s Solid Waste Regulation 1.7.13** – requiring that solid waste management facilities be operated in conformance with their approved operating and engineering plans.
- (2) **The DEM’s Solid Waste Regulation 1.14.01(b)(4)** – requiring facilities to implement their approved air and surface water monitoring plans within thirty (30) days of approval by the DEM.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), the J. R. Vinagro Corporation is hereby ORDERED to:

- (1) **Within ten (10) days of receipt of this NOV**, submit the Design Plans, the Design Specifications and a schedule to the DEM for the construction of the Enclosed Building, including the date the work will be completed (the "Construction Schedule").
- (2) The Design Plans, the Design Specifications, and the Construction Schedule shall be subject to the DEM's review and approval. Upon review, the DEM 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, submit to the DEM a modified schedule or additional information necessary to correct the deficiencies.
- (3) Upon approval of the Design Plans, Design Specifications, and Construction Schedule, complete all work on the Enclosed Building in accordance with the approved Construction Schedule.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Sixteen Thousand Two Hundred Fifty Dollars (\$16,250.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),
 - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02903
 - (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

- (2) A copy of each request for hearing must also be forwarded to:

Richard M. Bianculli Jr., Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).

- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the town of Johnston wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 23-18.9-13, as is or as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Richard Bianculli at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Shun Properties, LLC
c/o Arthur J. Leonard, Esq., Registered Agent
321 South Main Street, Suite 301
Providence, RI 02903

J.R. Vinagro Corporation
c/o Fred J. Volpe, Esq., Registered Agent
130 Tower Hill Road
North Kingstown, RI 02852

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE

File No.: SW 2011 – 28

Respondents: Shun Properties, LLC and J.R. Vinagro Corporation

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) – Failure to operate the facility within an enclosed building	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250.00
C (1) and (2) – Failure to perform air and surface water monitoring and submit reports to DEM	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	4 violations	\$10,000.00
SUB-TOTAL					\$16,250.00

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 16,250.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to operate the facility within an enclosed building

VIOLATION NO.: C (1)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents are processing construction and demolition (C&D) outside of the confines of an enclosed building. The license for the facility stipulates that all of the C&D processing and transfer station activities would be conducted within the confines of an enclosed building. The operation of solid waste management facilities in conformance with their licensed is of significant importance to the regulatory program. Licenses incorporate all of the public health and safety and environmental protection regulations and requirements established in the DEM's solid waste regulations.</p> <p>(B) Environmental conditions: The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located within 4,400 feet of the Scituate Reservoir's surface water protection area. A small freshwater wetland is located along the southwestern perimeter of the facility. The facility is located in the Pocasset River watershed.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Many of the types of C&D, solid waste and recyclables accepted and processed at the facility are combustible and they are typically contaminated with such pollutants as lead, arsenic, asbestos, petroleum hydrocarbons and other potentially hazardous materials.</p> <p>(E) Duration of the violation: 9 months. The license was issued on 14 February 2011. DEM first observed the violation during its 26 May 2011 inspection.</p> <p>(F) Areal extent of the violation: Not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents have failed to provide to the DEM the plans, specifications and a schedule for construction of the building, despite receipt of a Notice of Intent to Enforce that was issued to the J. R. Vinagro Corporation from the DEM on 10 August 2011, which required that they do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** J.R. Vinagro Corporation has previously been cited for violations of the DEM's solid waste regulations in multiple enforcement actions issued by the DEM.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the license and the DEM's solid waste regulations. Respondents, as the owner and/or operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform air and surface water monitoring and submit reports to DEM
 VIOLATION NOS: C (1) and (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents failed to perform air and surface water monitoring in accordance with the license during the first and second quarters of 2011. The performance of these monitoring activities and the submittal of air and surface water monitoring reports to DEM is of importance to the regulatory program. DEM relies upon such air and surface water monitoring in an effort to meet its public health and safety and environmental protection obligations.
- (B) **Environmental conditions:** The Facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located within 4,400 feet of the Scituate Reservoir’s surface water protection area. A small freshwater wetland is located along the southwestern perimeter of the facility. The facility is located in the Pocasset River watershed. Storage of this material for extended periods could allow for the leaching of contaminants to the groundwater or in pollution of surface water. Excessive stockpiling of such material for extended periods presents a significant fire hazard. The processing of C&D and other solid wastes frequently results in the airborne release of pollutants.
- (C) **Amount of the pollutant:** Not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Many of the types of solid waste and recyclables accepted and processed at the facility are combustible and they are typically contaminated with such pollutants as lead, arsenic, asbestos, petroleum hydrocarbons and other potentially hazardous materials.
- (E) **Duration of the violation:** The first quarter air and surface water monitoring should have been completed before 16 March 2011 and the second quarter air and surface water monitoring should have been completed before 14 June 2011.
- (F) **Areal extent of the violation:** Not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to perform air and surface water monitoring in accordance with the license.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** J.R. Vinagro Corporation has previously been cited for violations of the DEM's solid waste regulations in multiple enforcement actions issued by the DEM.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the license and the DEM's solid waste regulations. Respondents, as the owner and/or operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		TYPE I	TYPE II	TYPE III
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	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250