

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

In Re: Independent Sand & Gravel of R.I., Inc. File Nos.: OC&I/SW 00-44 and  
Global Waste Recycling, Inc. OC&I/SW 00-28

**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 J. R. Vinagro Corporation and Rockwood Realty LLC (the “Respondents”). 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 litigation and administrative enforcement actions described in Paragraph B(4) below.

**B. STIPULATED FACTS:**

- (1) WHEREAS, the subject property is located at 180 Colvintown Road in Coventry, Rhode Island, also known as Assessor’s Plat 92, Lot 1 (the “Property”).
- (2) WHEREAS, the Property was formerly owned by Independent Sand & Gravel of R.I., Inc. (“Independent”).
- (3) WHEREAS, Global Waste Recycling, Inc. (“Global”) formerly operated a solid waste management facility on the Property.
- (4) WHEREAS, the Property is the subject of several RIDEM Notices of Violation issued to Global and/or Independent and other civil actions alleging violations of R.I.G.L. §§ 23-18.9-1 *et seq.* (the “Refuse Disposal Act”). Those Notices of Violation include, but are not limited to, the following: (1) the September 21, 2000 Notice of Violation issued to Independent (File No. OC&I/SW 00-044); (2) the September 27, 2000 Notice of Violation issued to Independent (File No. OC&I/SW 00-044 (Amended)); (3) the September 21, 2000 Notice of Violation issued to Global (File No. OC&I/SW 00-028); and (4) the January 10, 1991 Notice of Violation issued to Tri-County Sand and Gravel, William Bettez, Bettez Construction, Inc. and Bettez Recycling (File No. C91-

0004) (collectively, the “NOVs”). The Property is also the subject of certain lawsuits, including Jan Reitsma v. Global Waste Recycling, Inc. (C.A. No. KC 00-57) and Bettez Construction Company, Inc. v. Keeney (C.A. No. PC 91-2509)(the NOVs and lawsuits hereinafter collectively referred to as the “Actions”).

- (5) WHEREAS, RIDEM reached an agreement with Global and Independent on December 13, 2006 to resolve the Actions. The agreement required Global and Independent to take certain actions pursuant to a Consent Judgment that was to be filed in Kent County Superior Court pursuant to C.A. No. KC 00-57 (the “Consent Judgment”).
- (6) WHEREAS, Global and Independent failed to file the Consent Judgment with Kent County Superior Court and failed to comply with the terms of the Consent Judgment.
- (7) WHEREAS, on June 7, 2010, OC&I and the Respondents met on the Property and dug test pits to determine the depth and lateral extent of the remaining solid waste on the Property.
- (8) WHEREAS, on June 18, 2010 Rockwood Realty LLC purchased the Property.
- (9) WHEREAS, J.R. Vinagro Corporation currently operates a gravel excavation business on the Property.
- (10) WHEREAS, the Respondents are not responsible for the violations alleged in the Actions, however, the Respondents have agreed to undertake certain activities as set forth below.
- (11) WHEREAS, in lieu of proceeding to Superior Court to enforce the Actions, 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 Actions.
- (12) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement 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 the Respondents.

- (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, the Respondents and their 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) RECORDING OF AGREEMENT – The Respondents agree to have the fully executed Consent Agreement recorded in the land evidence records of the Town of Coventry, Rhode Island within ten (10) business days after it receives the fully executed Consent Agreement from RIDEM. The Respondents shall ensure that the original Consent Agreement is recorded and a copy is returned to RIDEM at the Respondents’ sole expense.
- (5) CONDITIONS –
  - a) The Respondents agree to manage the remaining solid waste on the Property in accordance with the Remedial Approach attached hereto as Exhibit A, which is incorporated by reference herein.
  - b) The excavation, removal and/or backfilling activities referred to herein and in Exhibit A are to be completed in accordance with that certain site plan by GZA GeoEnvironmental, Inc. entitled “Global Waste Recycling, Exploration Location Plan” dated July 7, 2006 in the form attached hereto as Exhibit B, which is incorporated by reference herein.
  - c) The Respondents shall notify RIDEM in writing at least ten (10) days prior to commencing any of the excavation, removal and backfilling operation required by this Agreement.
  - d) The Respondents shall pay to RIDEM the sum of One Hundred Thousand Dollars (\$100,000.00) as follows:
    - (1) Within twenty (20) days of the effective date of this Agreement, the Respondents shall pay to RIDEM the sum of Fifteen Thousand Dollars (\$15,000).

(2) Beginning in March 2011, the Respondents shall pay to RIDEM Seven Thousand and Eighty Three Dollars (\$7,083) on March 15, June 15, September 15 and December 15 of each year until the entire amount has been paid.

(3) All payments shall be in the form of a certified check made payable to the "R.I. General Treasurer – Environmental Response Fund Account." The payments shall be delivered to:

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

(6) RIGHT OF ACCESS – The Respondents provide 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 Respondents shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property shall provide the same access and cooperation as long as they control the Property. The Respondents 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. 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.

**D. COMPLIANCE:**

(1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the Actions. Upon completion of the excavation, removal and backfilling activities referred to in Exhibits A and B and full payment of the amount set forth in Paragraph C (5)(d) above, RIDEM shall issue a Release and Discharge of the NOV's and this Agreement to the Respondents for recording in the Land Evidence Records of the Town of Coventry and shall dismiss with prejudice any and all actions relating to the matters addressed herein. Within ten (10) days of recordation, the Respondents shall provide a copy of the recorded Releases to RIDEM. The Respondents agree that the recording of the documents will be done at their sole expense.

- (2) FAILURE TO COMPLY –In the event that the Respondents fail to comply with the conditions specified in Paragraph C (5) (a) and (b) of this Agreement, and after no less than thirty (30) days have elapsed after notice by RIDEM that RIDEM considers the Respondents to be in non-compliance, if the Respondents have failed to cure any non-compliance within that thirty (30) day period, the Respondents shall pay a stipulated penalty 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. Any such waiver, deferral or reduction of such penalty shall not be unreasonably withheld. RIDEM shall not impose such penalty for what RIDEM deems to be minor delays or de minimus non-compliance with this Agreement. The stipulated penalties shall accrue at a rate of Five Hundred Dollars (\$500.00) per month until the Respondents cure such non-compliance.
- (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 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 the Respondents for violations pertaining to the Property up to and including the date of execution of this Agreement, provided that the Respondents fully comply with the terms of this 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 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 the Respondents 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:

- Tracey Tyrrell, Supervising Environmental Scientist, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908. Tel. (401) 222-4700, ext. 7407.
- Susan Forcier, Esq. RIDEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908. Tel. (401) 222-6607.
- Kristen Sherman, Esq., Adler Pollock & Sheehan, PC, One Citizens Plaza, 8<sup>th</sup> Floor, Providence, RI 02903. Tel. (401) 274-7200.
- Dana Zewinski, J.R. Vinagro Corp., 2208 Plainfield Pike, Johnston, RI 02919. Tel.: (401) 943-7100.

At any time prior to full compliance with the terms of this Agreement, J.R. Vinagro 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.**

*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.

In \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, 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 Rockwood Realty LLC:*

\_\_\_\_\_  
By: \_\_\_\_\_ (Print Name)

Its: \_\_\_\_\_ (Title)

Dated: \_\_\_\_\_

In my capacity as \_\_\_\_\_ of Rockwood Realty LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Rockwood Realty LLC to satisfy any obligation imposed upon it pursuant to said Agreement.

In \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Rockwood Realty LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Rockwood 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 Rockwood 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: \_\_\_\_\_



**EXHIBIT A**  
**REMEDIAL APPROACH**

The Respondents will submit to RIDEM on or before May 31, 2011 a Remedial Action Work Plan (“RAWP”) in accordance with Section 9 of RIDEM’s Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases. The following outlines the major components of the RAWP:

1. Except as otherwise allowed under Paragraph 4, the Respondents shall excavate the approximately ten thousand (10,000) cubic yard stockpile of construction and demolition (“C&D Debris”) from the area depicted on Exhibit B and relocate the material to the “Proposed Cap Area” shown thereon.
2. Except as otherwise allowed under Paragraph 4, the Respondents shall scrape certain residual material, approximating one hundred (100) cubic yards left by previous owners at various locations scattered throughout the Property and relocate that material to the “Proposed Cap Area” as shown on Exhibit B.
3. Except as otherwise allowed under Paragraph 4, the Respondents shall excavate all remaining solid waste on the Property that is located outside of the “Proposed Cap Area” as shown on Exhibit B and relocate the waste to the “Proposed Cap Area” as shown on Exhibit B.
4. The volume of the materials referenced in Paragraphs 1 and 2 above may be adjusted in the reasonable judgment of RIDEM based on visual observations, by a field engineer, of the presence or absence of solid waste (e.g., wood, metal, plastic, glass) within the subsurface materials. The field engineer will also be responsible for conducting air quality and fugitive odor emission monitoring during the excavation and loading processes and implementing an odor control contingency program, as needed.
5. The Respondents shall have the option of disposing of the material in Paragraphs 1, 2 and 3 above at a licensed solid waste management facility on or before May 31, 2011. Within ten (10) days of completion of the disposal, the Respondents shall submit documentation of disposal (e.g. receipts, bills, weight slips, etc.) to RIDEM.
6. The Respondents shall construct a soil cap/cover over the “Proposed Cap Area” as shown on Exhibit B, with the exact extent of the “Proposed Cap Area” to be field verified. The soil/cap cover will consist of a warning barrier (a highly visible, permeable geotextile) overlain by clean soil two

(2) feet thick. The soil/cap cover, including the side slopes, shall not extend into any wetlands.

7. If the material described in Paragraphs 1, 2 and 3 above is not removed from the Property and is going to be placed under the cap, the Respondents shall develop a storm water management plan for the capped and surrounding areas to prevent soil erosion, and ponding or flooding due to storm water.
8. The Respondents shall prepare an Environmental Land Use Restriction (“ELUR”) for the “Proposed Cap Area” as shown on Exhibit B. The ELUR, will consist of:
  - Restrict residential development from the “Proposed Cap Area” depicted on Exhibit B.
  - Require cover/cap and other engineered controls to be maintained in good condition.
  - Prohibit the use of groundwater at the Property from drinking water use.
  - Prohibit soil excavation in areas of engineered controls, unless on an emergency basis.
  - Provide for long-term maintenance, monitoring, and other measures necessary to assure the integrity of the remedial action.
  - Grant RIDEM the right to enter the Property for inspection and monitoring of remedial actions.
9. The Respondents shall prepare an environmental monitoring plan to address potential environmental issues. This will include and may not be limited to:
  - Semi-annual groundwater monitoring for a period of approximately five (5) years following completion of remedial construction; and
  - Annual cap/engineered control inspections.
10. Within thirty (30) days of receipt of written comments from RIDEM on the RAWP (unless a longer time is specified), the Respondents shall submit to RIDEM a revised RAWP or additional information necessary to address the comments.

**EXHIBIT B**  
**SITE PLAN**