

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 07-264S
)	
LOUIS VINAGRO, JR.,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	1
II.	<u>JURISDICTION</u>	2
III.	<u>PARTIES BOUND</u>	2
IV.	<u>DEFINITIONS</u>	2
V.	<u>STATEMENT OF PURPOSE</u>	5
VI.	<u>PAYMENT BY SETTLING PARTY OF RESPONSE COSTS</u>	5
VII.	<u>FAILURE TO COMPLY WITH CONSENT DECREE</u>	11
VIII.	<u>RELEASE OF NOTICE OF FEDERAL LIENS</u>	12
IX.	<u>COVENANT NOT TO SUE BY PLAINTIFF</u>	13
X.	<u>RESERVATION OF RIGHTS BY UNITED STATES</u>	13
XI.	<u>COVENANT NOT TO SUE BY THE SETTLING PARTY</u>	14
XII.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	15
XIII.	<u>ACCESS AND INSTITUTIONAL CONTROLS</u>	16
XIV.	<u>ACCESS TO INFORMATION</u>	16
XV.	<u>RETENTION OF RECORDS</u>	17
XVI.	<u>CERTIFICATION</u>	17
XVII.	<u>NOTICES AND SUBMISSIONS</u>	18
XVIII.	<u>RETENTION OF JURISDICTION</u>	19
XIX.	<u>INTEGRATION/APPENDICES</u>	19
XX.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	20
XXI.	<u>SIGNATORIES/SERVICE</u>	20
XXII.	<u>FINAL JUDGMENT</u>	20
XXIII.	<u>EFFECTIVE DATE</u>	20
XXIV.	<u>MODIFICATION</u>	21

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred for performance of removal actions taken by EPA in connection with the release or threatened release of hazardous substances at the Green Hill Road Superfund Site (the “Site”), in Johnston, Rhode Island. In conducting the removal action, EPA incurred response costs totaling \$2,376,115.79 through September 13, 2008.

B. The Green Hill Road Superfund Site (“the Site”). The Site is located at Green Hill Road in Johnston Rhode Island and is identified on the Town of Johnston Tax Assessor’s Map as Plat 31, Lot 37.

C. Old Pocasset Road Property (“Property I”). The Old Pocasset Property is located in Johnston, Rhode Island and is identified on the Town of Johnston Tax Assessor’s Map at Plat 44-4, Lot 293 and includes all improvements, etc. thereto. A description of Property I is attached as Appendix A.

D. The Green Hill Road Property (“Property II”). The Green Hill Property is identified on the Town of Johnston Tax Assessor’s Map at Plat 32, Lots 14, 21, 22, 25 and Plat 31, Lot 37 and includes all improvements, etc. thereto. A description of Property II is attached as Appendix B.

E. EPA alleges that Louis Vinagro, Jr. (“Settling Party”) is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred or to be incurred at or in connection with the Site.

F. The United States has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Party qualifies for an alternative payment method within the meaning of 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7), and is able to make the payments specified in Section VI.

G. The Settling Party has entered into this Consent Decree and does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint.

H. The United States and the Settling Party agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over the Settling Party. Solely for the purposes of this Consent Decree and the underlying Complaint, Settling Party waives all objections and defenses he may have to jurisdiction of the Court or to venue in this District. The Settling Party consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Party and its successors, distributees and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Party under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

“Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Fair Market Rate” shall mean the price at which Property I and/or Property II would be leased between a willing lessee and a willing lessor under actual market conditions, neither being under any compulsion to lease and both having reasonable knowledge of relevant facts.

“Fair Market Value” shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which Property I and/or Property II, as defined herein, would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, “Fair Market Value” shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, “Fair Market Value” shall mean the balance of Settling Party’s mortgage on the property at the time of the transfer.

“Financial Information” shall mean those financial documents identified in Appendix C.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Lease Agreement” or “Lease” shall mean any agreement or arrangement related to the lease, rental, or use of Property I and/or Property II, or any portion thereof, for any purpose in exchange for money, any services, or any consideration.

“Net Lease Proceeds” shall mean the total annual value of all consideration received for the Lease of either Property I and/or Property II beginning on the Effective Date of this Consent Decree (or if the consideration cannot be determined, or is less than the Fair Market Rate, the Fair Market Rate for leasing Property I or Property II) less (1) federal and state income taxes (if applicable) owed on the proceeds (exclusive of taxes required to be paid pursuant to Paragraph 8); and (2) any legal fees owed by the Settling Party to Pannone, Lopes, Devereaux & West LLC for (i) any and all legal work performed in the securing of the Lease; and (ii) any fees incurred in the defense of this

action, including but not limited to the negotiation and execution of this Consent Decree, that are outstanding at the time of the receipt by the Settling Party of the Lease proceeds, however, the fees deducted shall at no time amount to more than 10% of the total annual value of all consideration received for the Lease of either Property I and/or Property II. The Settling Party shall provide EPA with documentation sufficient to show the total value of all consideration received by the Settling Party for the Lease (or if the consideration cannot be determined, the Fair Market rate of the Lease) at the time of the Lease, the full amount of the proceeds of the Lease, the amounts corresponding to the federal and state income taxes owed on the proceeds, and the basis for and amounts of legal fees that are used in calculating the "Net Lease Proceeds".

"Net Sales Proceeds" shall mean the total value of all consideration received by the Settling Party for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property being Transferred) less (i) the closing costs limited to those reasonably incurred and actually paid by the Settling Party associated with the Transfer of the Property; (ii) federal and state taxes owed on the proceeds (if applicable)(exclusive of taxes required to be paid pursuant to Paragraph 8); (iii) any legal fees owed in securing the sale; and (iv) any fees owing to Pannone, Lopes, Devereaux & West LLC incurred in the defense of this action, including but not limited to the negotiation and execution of this Consent Decree, that are outstanding at the time of the receipt by the Settling Party of the Sales proceeds, however, the fees deducted shall at no time amount to more than 10% of the total value of all consideration received by the Settling Party for each Transfer. The Settling Party shall provide EPA with documentation sufficient to show the total value of all consideration received by the Settling Party for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items (i) through (iv) above. This documentation shall include, either as part of the report or separately, (1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and (2) a schedule showing all outstanding indebtedness on the Property.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States and the Settling Party.

"Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the DOJ on behalf of EPA has paid at or in connection with the Site through the Effective Date plus accrued Interest on all such costs through such date.

"Plaintiff" shall mean the United States.

"Property" shall mean Property I and/or Property II, which is the subject of a Transfer or Lease and which are described in the Appendices A and B, respectively.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Party” shall mean Louis Vinagro Jr.

“Site” shall mean the Green Hill Road Superfund Site.

“Transfer” shall mean each sale, assignment, transfer or alienation of any type of Property I and/or Property II, or any portion thereof, or interest therein, by the Settling Party or an entity owning Property I and/or Property II, where any interest in Property I and/or Property II by the Settling Party or an entity owning Property I and/or Property II is (i) transferred and Fair Market Value is received in consideration, or (ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property I and/or Property II, including, but not limited to, a deed or other assignment in lieu of foreclosure.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for the Settling Party to make cash payments to address its alleged civil liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section IX, and subject to the Reservations of Rights by United States in Section X.

VI. PAYMENT BY SETTLING PARTY OF RESPONSE COSTS

5. The Settling Party shall pay to EPA the amount of \$1,975,000, plus an additional sum for Interest on that amount calculated from January 1, 2009 through the date of payment (“Payment Amount”). The Settling Party agrees to Transfer Property I and Property II in order to fund the Payment Amount to be paid to EPA. Settling Party shall not be obligated to continue to Transfer the Properties after the full Payment Amount has been received by EPA.

a. The Settling Party agrees that it will not sell, assign, transfer, lease, exchange, mortgage or otherwise encumber any interest, or portion thereof, in Property I and/or Property II except by means of a Transfer. The Settling Party shall use its Best Efforts to market fee simple title to the entirety of Property I and Property II for sale within ten days of the Effective Date of this Consent Decree, and shall continue to use its

Best Efforts to market and sell Property I and Property II until such time as the contract of sale is accepted and approved by EPA and until the entire Payment Amount has been paid to EPA. The Transfer of the Property I and Property II shall be subject to, and conditioned upon, EPA's prior written approval.

b. "Best Efforts" to sell the Property I and Property II shall include, at a minimum:

(1) Within 10 days of the Effective Date of this Consent Decree, Settling Party shall submit to EPA, for approval, the name and contact information of an independent, third party appraiser who is generally certified in the State of Rhode Island to perform an appraisal of the Fair Market Value of the Property. Any appraisal shall be performed in accordance with Uniform Standards of Professional Appraisal Practice using the definition of market value from the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book). If EPA disapproves the proposed appraiser, Settling Party shall submit the name and contact information of another appraiser who is generally certified in the State of Rhode Island within 15 days from EPA's notification of disapproval.

(2) Within 30 days of EPA's notification of approval of the appraiser, Settling Party shall submit to EPA the approved appraiser's appraisal and market analysis of Property I and Property II, based on its present condition.

(3) Settling Party shall submit copies of the appraisals and market analyses to the United States within five (5) days of the receipt of such documents. If EPA, within thirty (30) days of receiving the appraisal, requests that the Settling Party obtain a second appraisal of either or both Property I or Property II, the Settling Party shall, within thirty (30) days of the date of the request, submit to EPA for approval the name of another appraiser who is generally certified in the State of Rhode Island to perform an appraisal of the Fair Market Value of the property. Within thirty (30) days of EPA's approval of the second appraiser, the Settling Party shall submit to EPA a second appraisal of the Fair Market Value of the property. EPA may only request a third appraisal if the prior two appraisals failed to comply with the requirements of Paragraph 5.b.(1).

(4) By no later than twenty (20) days after receiving written approval by EPA of the appraisal, Settling Party shall execute a listing service agreement for the sale of Property I and Property II with a real estate agency licensed to practice in the State of Rhode Island and for dealer or agent who usually deals with the type of property in question and, Property I and Property II must be listed for sale within 14 days of approval by EPA of the terms and conditions as outlined in Paragraph 5.b.(5).

(5) The Settling Party shall consult with EPA regarding all terms and conditions of the Settling Party's listing of Property I and Property II for sale with a broker, dealer or agent and the Settling Party's advertising of Property I and Property II as being for sale. Such consultation shall occur not later than ten days before listing or

advertising Property I and/or Property II. The initial proposed listing price must be equal to Fair Market Value and cannot be more than 10% over the appraised value, unless otherwise approved by EPA.

(6) Settling Party must advertise Property I and Property II as being for sale on at least a monthly basis in national computer networks, commercial referral services, direct marketing and mailing programs, real publication, trade or other publication suitable for the Property or a newspaper of general circulation (defined as one with a circulation of over 10,000) covering Rhode Island. Settling Party shall provide copies of all advertising to EPA within 30 days of its publication or display.

(7) Settling Party must respond to reasonable inquiries of prospective buyers; and maintain Property I and Property II in suitable condition for exhibition to prospective buyers; and allow Property I and Property II to be shown at all reasonable times.

(8) If Property I and/or Property II have not sold within 2 years of the Effective Date of this Consent Decree. Settling Party shall reduce the asking price for the Property by 10%, and continue to reduce the asking price by at least 5% each year thereafter.

c. Settling Party shall notify EPA of the terms of any offer for the purchase of any portion of the Property I and/or Property II within 7 days of its receipt. EPA must notify Settling Party of any request for modification, rejection, or for an appraisal in accordance with paragraph 6.e. within 10 days of its receipt of the offer.

6. Payments for the Sale of Property I and Property II

a. The Settling Party shall pay to EPA 100% of the Net Sales Proceeds of the Transfers up to an amount of \$1,975,000, plus an additional sum for Interest on that amount calculated from January 1, 2009 through the date of any payment ("Payment Amount"). Payment shall be made to EPA within 10 days of the effective date of the Transfer of Property I and/or Property II. Any amounts paid to EPA under this Paragraph or Paragraph 7 shall reduce the outstanding Payment Amount. However, Interest shall continue to accrue on any remaining amount due.

b. Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID # (GREEN HILL ROAD, JOHNSTON, RI SITE ID = 01 AX), and DOJ Case Number 90-11-2-407/5, Civil Action No. 07-264S and shall be sent to:

U. S. Department of Justice
Nationwide Central Intake Facility

P. O. Box 70932
Charlotte, NC 28272-0932

Lockbox address for overnight mail:

QLP Wholesale Lockbox - D1113-022
Lockbox #70932
1525 West WT Harris Blvd.
Charlotte, NC 28262

At the time of payment, Settling Party shall send notice that payment has been made to DOJ, and EPA and to the Regional Financial Management Officer in accordance with the notice provisions in Section XVII (Notice and Submissions), and to EPA's Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268, and the Financial Litigation Unit, United States Attorney's Office, Fleet Center, 50 Kennedy Plaza, 8th Floor, Providence, RI 02903. The total amount paid shall be deposited in the EPA Hazardous Substance Superfund.

c. At least 30 days prior to any such Transfer, the Settling Party shall notify EPA of the proposed Transfer, which notice shall include a description of the Property or interest or portion thereof to be sold, the identity of the purchaser, the terms of the Transfer, the consideration to be tendered or paid, and a copy of the Transfer agreement.

d. Any contract of sale shall state that the sale is conditioned upon EPA's prior written approval of the sale. Any contract of sale must provide for payment and a closing date within 90 days of the date of the contract, unless otherwise approved by EPA in writing.

e. EPA may request a new appraisal, if one has not been obtained within 1 year of the Transfer. Settling Party shall, within thirty (30) days of the date of the request, submit to EPA for approval the name of an appraiser to perform an analysis of the Fair Market Value of the property. If EPA disapproves the proposed appraiser, Settling Party shall submit the name and contact information of another appraiser within 15 days from EPA's notification of disapproval. Within thirty (30) days of EPA's approval of the appraiser, the Settling Party shall submit to EPA a new appraisal of the Fair Market Value of the property.

f. Within two days of entering into a contract of sale with any prospective purchaser, the Settling Party shall provide EPA with a copy of the sales contract and a written notice to EPA indicating the identity of the purchaser, and the expected amount of the Net Sales Proceeds at the time of the closing.

g. EPA shall not withhold approval for any contract for sale that would guarantee full payment within 10 days of the closing date of the Transfer of the Payment

Amount owing to EPA. All consideration for the sale shall be paid at the time of the closing, unless the EPA agrees to a different arrangement.

h. At the time of the closing of the transaction for the Transfer, the Settling Party shall direct the closing agent to disburse the Net Sales Proceeds up to the Payment Amount as outlined in Paragraph 6.a and 6.b.

i. The Settling Party shall notify EPA of the completion of the Transfer within 10 days of the date of closing or Transfer and shall include with such notification a copy of the closing documents and any contract documents, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA.

j. Settling Party may make a cash payment of the Payment Amount or any remaining debt owing to EPA under the Consent Decree in lieu of selling Property I and/or Property II at any time.

k. In the event of a Transfer of Property I and/or Property II or any portion thereof or interest therein, the Settling Party shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if EPA and the Settling Party modify this Consent Decree as provided in Section XXIV (Modification).

7. Payments for Lease of Property I and/or Property II

a. Settling Party may not enter any Lease Agreement for Property I and/or Property II without the prior written consent of EPA. Settling Party may seek approval to enter a Lease Agreement by submitting a copy of the proposed Lease Agreement to EPA. The Lease Agreement must be at a Fair Market Rate for the property. EPA will either approve, reject, request modification, or request further information within 30 days of receipt of the proposed Lease Agreement.

b. Settling Party shall pay to EPA 100% of the Net Lease Proceeds of any Lease Agreement, up to the Payment Amount, unless otherwise agreed by EPA in writing, until termination or expiration of the Lease Agreement. Payment shall be made within seven (7) days of receipt of the lease payment by the Settling Party, and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number (GREEN HILL ROAD, JOHNSTON, RI SITE ID = 01 AX), and DOJ Case Number 90-11-2-407/5, Civil Action No. 07-264S and shall be sent to:

U. S. Department of Justice
Nationwide Central Intake Facility
P. O. Box 70932

Charlotte, NC 28272-0932

Lockbox address for overnight mail:

QLP Wholesale Lockbox - D1113-022
Lockbox #70932
1525 West WT Harris Blvd.
Charlotte, NC 28262

At the time of payment, Settling Party shall send notice that payment has been made to DOJ, and EPA and to the Regional Financial Management Officer in accordance with the notice provisions in Section XVII (Notice and Submissions), and to EPA's Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268, and the Financial Litigation Unit, United States Attorney's Office, Fleet Center, 50 Kennedy Plaza, 8th Floor, Providence, RI 02903. The total amount paid shall be deposited in the EPA Hazardous Substance Superfund.

c. Settling Party may request to retain a portion of the Net Lease Proceeds by demonstrating a need for living expenses. The request must include Settling Party's last two years of tax returns, a list of costs associated with the property to be leased, and a list of living expenses and all income. Settling Party must provide EPA with any additional financial information requested. Settling Party cannot retain of any portion of Net Lease Proceeds without prior written approval from EPA.

d. During the Lease, the Settling Party shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if EPA and the Settling Party modify this Consent Decree in writing.

8. Taxes, Liens, and Other Matters: The Settling Party shall be liable for all past and future real estate taxes and assessments due and owing on Property I and Property II, and shall pay all past and future real estate taxes and all past and future assessments which become due and owing on Property I and Property II. Within thirty (30) days after the signing of this Consent Decree, the Settling Party shall pay any unpaid real estate taxes and assessments that are due and owing on Property I and Property II. Upon request, the Settling Party shall provide to the United States proof that it has paid all real estate taxes. The Settling Party shall timely make all payments on any obligations that are secured by any real estate in which the Settling Party has an ownership interest as of the time of signing this Consent Decree. Payment of real estate taxes, assessments, obligations, and insurance premiums, other than those customarily prorated at closing, shall not be considered in calculating Net Sales Proceeds. No new easement, restriction or encumbrance may be placed on Property I and/or Property II by the Settling Party without the prior approval of the United States.

9. Consent Judgment Liens: Within 30 days of entry of this Consent Decree, the Settling Party shall file or cause to be filed in the land records office of the appropriate county for both Property I and Property II Consent Judgment Liens, in the

form attached hereto as Appendix D, indicating that a consent judgment has been entered in this action requiring the Settling Party to pay the amount set forth in Section VI (Payment by Settling Party of Response Costs) of this Consent Decree from Net Sales Proceeds from the Transfer of Property I and Property II, and/or Net Lease Proceeds from the Lease of Property I and/or Property II, and placing a Consent Judgment Lien on Property I and Property II in the amount of this payment obligation. Copies of the recorded liens shall be provided to EPA within 60 days of signing this Consent Decree.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

10. Interest on Late Payments. If the Settling Party fails to make any payments under Paragraphs 6 and 7 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

11. Stipulated Penalty.

a. If any amounts due under Paragraphs 6 and 7 are not paid by the required date, the Settling Party shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 10, \$500 per violation per day that such payment is late. If the Settling Party does not comply with the notice obligations in Section VI (Payment by Settling Party of Response Costs), the Settling Party shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$100 per violation per day of such noncompliance. Notice obligations in Section VI (Payment by Settling Party of Response Costs) include: i) submission of name and contact information for appraisers (Paragraph 5.b.(1)); ii) submission of an appraisal and market analysis (Paragraphs 5.b.(2)-(3)); iii) submission of a second appraisal, if required (Paragraphs 5.b.(3)); iv) consulting with EPA regarding all terms and conditions of the Settling Party's listing of Property I and/or Property II with a broker, dealer or agent and the Settling Party's advertising of Property I and/or Property II as being for sale (Paragraph 5.b.(5)); v) sending copies of all advertising (Paragraph 5.b.(6)); vi) notification of the terms of any offer (Paragraph 5.c.); vii) notifying EPA of the proposed Transfer at least 30 days prior to any such Transfer (Paragraph 6.c.); viii) notifying EPA of the completion of the Transfer within 10 days of the date of closing (Paragraph 6.c.); ix) providing written notice to EPA indicating the identity of the purchaser, and the expected amount of the Net Sales Proceeds at the time of the closing (Paragraph 6.e.); and x) notice that payment has been made to EPA and DOJ in accordance with Section XVII (Notices and Submissions) (Paragraphs 6.b. and 7.b.).

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region, the Site Spill ID Number, DOJ Case Number 90-11-2-407/5, Civil Action No. 07-264S, and shall indicate that the payment is for stipulated penalties. Payments under this Paragraph shall be sent to:

U.S. Environmental Protection Agency,
Superfund Payments,
Cincinnati Finance Center,
P.O. Box 979076,
St. Louis, MO 63197-9000

c. At the time of each payment, the Settling Party shall send notice that payment has been made to EPA and DOJ in accordance with Section XVII (Notices and Submissions), and to EPA's Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due, or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

12. If the United States brings an action to enforce this Consent Decree, the Settling Party against whom such action is brought shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

13. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Settling Party's failure to comply with the requirements of this Consent Decree.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse the Settling Party from payment as required by Section VI (Payment by Settling Party of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. RELEASE OF NOTICE OF FEDERAL LIENS

15. Within 60 days after EPA receives the Payment Amount, including all interest owing, as provided in Section VI, Paragraphs 5, 6 and 7 of this Consent Decree, EPA shall release the CERCLA Lien on Property II and Consent Judgment Liens on Property I and Property II by filing Releases of Notice of Federal Liens in the Recorder's Office at the Registry of Deeds, Town of Johnston, Rhode Island. The Release of Notice of Federal Liens shall release the CERCLA Lien on Property II filed on July 23, 2004 (found in Book 1436, Page 230) and the Consent Judgment Liens on Property I and Property II filed within 30 days of entry of this Consent Decree and shall not release any other lien, easement or encumbrance which may exist upon Property I and/or Property II.

IX. COVENANT NOT TO SUE BY PLAINTIFF

16. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI, Paragraphs 5, 6 and 7 (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of his obligations under this Consent Decree. This covenant not to sue extends only to Settling Party and does not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

17. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 16. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the Settling Party with respect to:

- a. liability for failure of the Settling Party to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

18. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen proceedings against Settling Party in this action or in a new action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Party, is false or, inaccurate in any material respect.

XI. COVENANT NOT TO SUE BY THE SETTLING PARTY

19. The Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Rhode Island, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

21. Settling Party agrees not to assert any claims and to waive all claims or causes of action that he may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Party with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

22. The waiver in Paragraph 21 shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. Except as provided in Paragraph 21 and Paragraph 22, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 21 and Paragraph 22, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that he may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

24. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Party is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all Past Response Costs.

25. The Settling Party agrees that, with respect to any suit or claim for contribution brought by him for matters related to this Consent Decree, he will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Party agrees that, with respect to any suit or claim for contribution brought against him for matters related to this Consent Decree, he will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon him. In addition, the Settling Party shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

XIII. ACCESS AND INSTITUTIONAL CONTROLS

27. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require and/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

28. Settling Party shall commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere or adversely affect the implementation, integrity or protectiveness of the removal measures implemented by EPA at the Site.

- a. The Settling Party may submit to EPA any proposed plans for the Site for a determination of whether they would “interfere or adversely affect the implementation, integrity or protectiveness of the removal measures implemented by EPA at the Site.”

XIV. ACCESS TO INFORMATION

29. The Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as “records”) within his possession or control or that of his contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

30. Confidential Business Information and Privileged Documents.

a. The Settling Party may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified the submitting Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to the Settling Party.

b. The Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Party asserts such a privilege in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Party shall

retain all records that he claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

31. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records, documents or information evidencing conditions at or around the Site.

XV. RETENTION OF RECORDS

32. Until 5 years after the entry of this Consent Decree, the Settling Party shall preserve and retain all non-identical records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the document retention period in the preceding paragraph, the Settling Party shall notify EPA and DOJ at least 60 days prior to its destruction of any such records, and, upon request by EPA or DOJ, shall deliver any such records to EPA. The Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege, it shall provide Plaintiff with the following: (1) the title of the record; (2) the date of the record; (3) the name and title of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Party shall retain all records that he claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

XVI. CERTIFICATION

34. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA

requests for information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Party executes this Consent Decree.

c. Settling Party has a good and lawful right and power to sell and convey Property I and Property II or any interest therein, and that the Property is free and clear of all encumbrances.

i. The United States acknowledges that Settling Party has provided notice and copies of the following Notice of Violations from the State of Rhode Island and Providence Plantations Department of Environmental Management Office of Compliance and Inspection: No. OC&I/SW 02-001 August 2, 2002; No. OC&I/SW 99-030 October 13, 1999; No. OC&I/SW 99-029 October 13, 1999; No. CI/SW 98-023 August 3, 1998; No. CI/SW 99-066 July 25, 2000; No. CI/SW 99-031 September 23, 1999; No. OC&I/SW 01-018, OC&I/AIR 01-04 February 20, 2001.

XVII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and the Settling Party, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
DOJ Case Number 90-11-2-407/5
P.O. Box 7611
Washington, DC 20044-7611

As to EPA:

Steven Schlang

Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
Office of Environmental Stewardship
One Congress Street, Suite 1100,
Mail Code SES
Boston, Massachusetts 02114-2023

As to the Regional Financial Management Officer:

David Tornstrom
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100,
Mail Code MCO
Boston, Massachusetts 02114-2023

As to the Settling Party:

Louis Vinagro, Jr.
Care of Thomas R. Gonnella
Pannone, Lopes, Devereaux & West LLC
317 Iron Horse Way, Suite 301
Providence, Rhode Island 02908

XVIII. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIX. INTEGRATION/APPENDICES

36. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

- Appendix A: A description of Property I.
- Appendix B: A description of Property II
- Appendix C: Financial Information
- Appendix D: Consent Judgment Liens for Property I and Property II.

XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Party consents to the entry of this Consent Decree without further notice.

38. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XXI. SIGNATORIES/SERVICE

39. Each undersigned representative of the Settling Party and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

40. Settling Party hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Party in writing that it no longer supports entry of the Consent Decree.

41. Settling Party shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Party hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XXII. FINAL JUDGMENT

42. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Party. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. EFFECTIVE DATE

43. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered, or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XXIV. MODIFICATION

44. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

SO ORDERED THIS ____ DAY OF _____, 2010.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Louis Vinagro, Jr., Civil Action No. 07-264S.

FOR THE UNITED STATES OF AMERICA

Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 12/11/09

Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 12/21/09

Rachel Hankey
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Washington, DC 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Louis Vinagro, Jr., Civil Action No. 07-264S.

FOR THE UNITED STATES OF AMERICA

Date: 12/24/09

Regional Administrator
Region I
U.S. Environmental Protection Agency
One Congress Street
Suite 1100
Boston, MA 02114-2023

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Louis Vinagro, Jr., Civil Action No. 07-264S.

FOR DEFENDANT: Louis Vinagro, Jr.

Date: 11/12/09

Name: Louis Vinagro Jr.

Title:

Address: 20 Greenhill Road
Johnston, RI 02919

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Pannone Lopes Devereaux & West LLC,

Title: c/o Thomas R. Gonnella, Attorney

Address: 317 Iron Horse Way, Suite 301
Providence, RI 02908