

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Hoxsie Cleansers, LTD
The Vincent Perenti Revocable Living Trust
Hoxsie Corporation, Inc.
The Russell M. Yates, Jr. Trust
Gloria Perenti**

FILE NO.: 2010-01-SR

AMENDED 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. Administrative History

DEM issued informal notices to Hoxsie Cleansers, LTD and The Vincent Perenti Revocable Living Trust on November 17, 2008, July 27, 2009 and March 22, 2010 for the violations. The notices required Hoxsie Cleansers, LTD and The Vincent Perenti Revocable Living Trust to take certain actions to correct the violations. To date, Hoxsie Cleansers, LTD and The Vincent Perenti Revocable Living Trust have not complied with the notices.

C. Facts

- (1) The property is located at 1533 Warwick Avenue, Assessor’s Plat 312, Lots 315, 390 and 391 in the city of Warwick, Rhode Island (the “Property”). The Property includes a building used for a clothing dry cleaning business (the “Facility”).
- (2) The Vincent Perenti Revocable Living Trust (“Perenti Trust”) is the former owner of the Property.
- (3) Hoxsie Cleansers, LTD (“Hoxsie Cleansers”) operates the Facility.
- (4) Hoxsie Cleansers is registered with the DEM as a small quantity hazardous waste generator at the Facility pursuant to the DEM’s *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”) and pursuant to Title 40 of the Code of Federal Regulations (“40 CFR”) under the name of “Hoxsie Cleansers” with the U. S. Environmental Protection Agency (“EPA”) identification number RID069848836. The Facility generates regulated

hazardous waste including, but not limited to, tetrachloroethene, trichloroethene, and 1,1,1-trichloroethylene, all having EPA waste number F002.

- (5) On December 21, 2006, DEM was notified of a release of hazardous substances, including tetrachloroethylene and trichloroethylene, in the groundwater down gradient of the Property.
- (6) On June 4, 2007, DEM issued a Letter of Responsibility to Hoxsie Cleansers and Perenti Trust identifying each Respondent as a Responsible Party and requesting that Hoxsie Cleansers and Perenti Trust complete an investigation of the Property and submit a report of the investigation to DEM (the "SIR") in accordance with the DEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the "Remediation Regulations").
- (7) On February 11, 2008, DEM received the SIR.
- (8) The SIR stated that beryllium, total petroleum hydrocarbon ("TPH"), tetrachloroethene and trichloroethene were detected in the soil and/or groundwater on the Property as follows:

Sample Number	Media Sampled	Compound Detected	Concentration in parts per million ("ppm")
B-1	Soil	Beryllium	3.49
B-7	Soil	TPH	2,530
		Tetrachloroethene	246
MW-02	Groundwater	Tetrachloroethene	2.12
		Trichloroethene	0.858
MW-03	Groundwater	Tetrachloroethene	10.2
MW-04	Groundwater	Tetrachloroethene	26.2

- (9) The SIR stated that a reportable release occurred at the Property and that the current and previous dry cleaning units and hazardous waste storage area on the Property is a likely source of the TPH, tetrachloroethene, and trichloroethene.
- (10) The groundwater on the Property is classified as GB pursuant to the DEM's *Rules and Regulations for Groundwater Quality* (the "Groundwater Regulations").

- (11) The DEM's Remediation Regulations establish the following criteria for soil and groundwater:

Compound	Media	Commercial/ Industrial Direct Exposure Criteria (in ppm)	GB Groundwater Objective (in ppm)
Beryllium	Soil	1.3	
TPH	Soil	2,500	
Tetrachloroethene	Soil	110	
Tetrachloroethene	Groundwater		0.15
Trichloroethene	Groundwater		0.54

- (12) Hoxsie Cleansers and Perenti Trust have not proposed a minimum of two remedial alternatives in the SIR to address the release of hazardous materials on the Property.
- (13) Hoxsie Cleansers and Perenti Trust have failed to comply with the DEM's Hazardous Waste Regulations, Remediation Regulations and Groundwater Regulations.
- (14) On January 4, 2011 the DEM issued a Notice of Violation ("NOV") to Hoxsie Cleansers and Perenti Trust for the release of hazardous materials from the Property in violation of the DEM's Hazardous Waste Regulations, Remediation Regulations and Groundwater Regulations.
- (15) On January 6, 2011 the NOV was recorded on the title of the Property in the land evidence records of the city of Warwick on Book 7415 and Pages 211 through 223.
- (16) Hoxsie Cleansers and Perenti Trust filed an appeal of the NOV with the DEM's Administrative Adjudication Division ("AAD"), which is still pending at the AAD.

- (17) On July 5, 2012 Perenti Trust and The Russell M. Yates, Jr. Trust (“Yates Trust”) entered into an agreement whereby Perenti Trust agreed to transfer title to the Property to Yates Trust or any such entity designated by Yates Trust (the “Agreement”). In accordance with Paragraph 9 of the Agreement, Yates Trust agreed to indemnify and hold harmless Perenti Trust from any and all claims arising from the alleged contamination of the Property, including any cleanup costs or other requirements with respect to the remediation of the Property that may be brought by the DEM.
- (18) On August 28, 2013 Perenti Trust transferred title to the Property to Hoxsie Corporation, Inc. (“Hoxsie Corp”), the entity designated by Yates Trust to acquire title to the Property.
- (19) On August 28, 2013 the Rhode Island Secretary of State revoked the Certificate of Organization/Registration for Hoxsie Cleansers. Gloria Perenti is listed as the president of Hoxsie Cleansers.
- (20) As of the date of this Amended Notice of Violation (“Amended NOV”), the Respondents have failed to propose a minimum of two remedial alternatives in the SIR to address the release of hazardous materials on the Property.
- (21) As of the date of the Amended NOV, the Respondents have failed to comply with the DEM’s Hazardous Waste Regulations, Remediation Regulations and Groundwater Regulations.

D. 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 Rhode Island Water Pollution Act Section 46-12-5(a)** – prohibiting the placement of any pollutant in a location where it is likely to enter the waters of the State.
- (2) **The Rhode Island Water Pollution Act Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (3) **Groundwater Quality Regulations**
 - (a) **Rule 8.2** – prohibiting the discharge of any pollutant to groundwater without the approval of the Director.
 - (b) **Rule 8.3** – prohibiting the operation or maintenance of a facility in a manner that may result in a discharge of any pollutant to groundwater without the approval of the Director.

- (4) **Hazardous Waste Regulations 5.10** – requiring generators to immediately take steps to prevent, contain and/or clean up spills or releases of hazardous waste or materials.
- (5) **Remediation Regulations**
 - (a) **Section 4.01** – prohibiting the release of hazardous materials in any manner which may impact the classification or uses of the land, groundwater, or surface water without complying with all applicable rules and regulations.
 - (b) **Section 7.04** - requiring that a Responsible Party propose a minimum of two remedial alternatives in the SIR.

E. Order

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

- (1) **Within sixty days of receipt of the NOV**, submit to the DEM Office of Waste Management (“OWM”) a letter identifying at a minimum two alternatives to remediate the soil and groundwater contamination on the Property.
- (2) Upon receipt of a Remedial Approval Letter (“RAL”) or Order of Approval (“OA”) from OWM, complete the remediation of the Property in accordance with all of the terms and conditions of the RAL or OA and with all of the applicable requirements of the Remediation Regulations.

F. 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:

Thirty Six Thousand One Hundred Thirty Four Dollars (\$36,134.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of the NOV. Payment shall be in the form of a certified 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 Director determines that reasonable efforts have been made to comply promptly with this NOV.

G. 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 Paragraphs B through F 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 DEM's Administrative Adjudication Division, at the following address, within twenty 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
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (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:

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
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 city of Warwick 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 23-19.1, 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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey 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 G 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:

Hoxsie Cleansers, Ltd.
c/o Michael J. McCaffrey, Registered Agent
1380 Warwick Avenue
Warwick, RI 02888

The Vincent Perenti Revocable Living Trust
c/o Vincent and Gloria Perenti, Trustees
181 Grove Avenue
Warwick, RI 02889

Gloria Perenti d/b/a Hoxsie Cleansers, Ltd.
181 Grove Avenue
Warwick, RI 02889

Hoxsie Corporation, Inc.
c/o Russell Yates, Registered Agent
36 Sayles Avenue
Warwick, RI 02889

The Russell M. Yates, Jr. Trust
c/o Russell M. Yates, Jr., Trustee
36 Sayles Avenue
Warwick, RI 02889

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SITE REMEDIATION
 File No.: 2010-01-SR
 Respondents: Hoxsie Cleansers, Ltd., The Vincent Perenti Revocable Living Trust,
 Hoxsie Corporation, The Russell M. Yates, Jr. Trust, and Gloria Perenti

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	
D (1) through D (5)(a) – Release of Hazardous Materials	Type I (\$ <u>25,000</u> Max. Penalty)*	Major	\$12,500	1	\$12,500.00
D (5)(b) – Failure to Submit Remedial Alternatives	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250	1	\$6,250.00
SUB-TOTAL					\$18,750.00

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
<p>Economic Benefit of noncompliance identified by the State of Rhode Island for failing to properly remediate the release of hazardous materials on the Property. The Economic Benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<ul style="list-style-type: none"> • Profit Status C-Corporation • Filing Status C-Corporation • Initial Capital Investment \$0 • One-time Non-depreciable Expense \$175,000 • Annual Expense \$0 • First Month of Non-Compliance October 2008 • Compliance Date December 31, 2010 • Penalty Due Date December 31, 2010 • Useful Life of Pollution Control N/A • Equipment Annual Inflation Rate N/A • Discount/Compound Rate 7.8% 	<p>\$17,384.00</p>
<i>SUB-TOTAL</i>		\$17,384.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$36,134.00

PENALTY MATRIX WORKSHEET

CITATION: Release of Hazardous Materials
 VIOLATION NO.: D (1), (2), (3), (4) & (5)(a)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> 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>FACTORS CONSIDERED: 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 released hazardous materials to the land and waters of the State and failed to remediate the release. The requirement to take immediate steps to contain and remediate a release of hazardous materials is a major component of the Groundwater, Hazardous Waste and Remediation Regulations.</p> <p>(B) Environmental conditions: The property is located in a GB groundwater.</p> <p>(C) Amount of the pollutant: Unknown.</p> <p>(D) Toxicity or nature of the pollutant: Tetrachloroethene and trichloroethene are volatile organic compounds used as industrial solvents that have been determined to cause liver damage in mice as a result of oral exposure. Beryllium is a heavy metal that has been found to cause chronic beryllium disease in humans by inhalation exposure which results in damage to lung tissue.</p> <p>(E) Duration of the violation: Unknown. DEM issued a Letter of Responsibility to the Respondents on June 4, 2007 notifying the Respondents of the release and the requirement to remediate the release.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents conducted a site investigation and submitted a report dated February 11, 2008 which identified a release of hazardous materials on the property. Since that time Respondents failed to take steps to prevent the migration of the hazardous materials or to remediate the release.
- (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:** Not relevant.
- (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:** Respondents 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 relevant.

<u>X</u> MAJOR	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 \$12,500	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$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 Submit Remedial Alternatives

VIOLATION NO.: D (5)(b)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</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 failed to identify a minimum of two remedial alternatives to address the release of hazardous materials on the property. The site investigation report submitted by the Respondents on February 11, 2008 identified a release of hazardous materials on the property but failed to propose remedial alternatives to address the soil and groundwater contamination.</p> <p>(B) Environmental conditions: The property is located in a GB groundwater.</p> <p>(C) Amount of the pollutant: Unknown.</p> <p>(D) Toxicity or nature of the pollutant: Tetrachloroethene and trichloroethene are volatile organic compounds used as industrial solvents that have been determined to cause liver damage in mice as a result of oral exposure. Beryllium is a heavy metal that has been found to cause chronic beryllium disease in humans by inhalation exposure which results in damage to lung tissue.</p> <p>(E) Duration of the violation: DEM issued a letter to Gloria Perenti on November 17, 2008 and letters to the Respondents on July 27, 2009 requiring the submission of a letter to DEM that identifies a minimum of two remedial alternatives.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take steps to identify alternatives to remediate the release of hazardous materials on the property.
- (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:** Not relevant.
- (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:** Respondents 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 relevant.

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