

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

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Russell Yates ("Yates"). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving, **with regard only to the RIDEM, Hoxsie Corporation, Inc., and The Russell M. Yates, Jr. Trust**, the alleged violations set forth in an Amended Notice of Violation issued to Hoxsie Cleansers, LTD, The Vincent Perenti Revocable Living Trust, Hoxsie Corporation, Inc., The Russell M. Yates, Jr. Trust and Gloria Perenti (collectively, the "Respondents") by the RIDEM on 2 October 2014. This Agreement does not affect any rights or causes of action that the RIDEM may possess against Hoxsie Cleansers, LTD, The Vincent Perenti Revocable Living Trust, or Gloria Perenti arising from or related to the Amended Notice of Violation.

B. STIPULATED FACTS

- (1) WHEREAS, 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) WHEREAS, the Vincent Perenti Revocable Living Trust ("Perenti Trust") is the former owner of the Property.
- (3) WHEREAS, Hoxsie Cleansers, LTD ("Hoxsie Cleansers") operates the Facility.
- (4) WHEREAS, on 4 January 2011, the RIDEM issued a Notice of Violation (the "2011 NOV") to Hoxsie Cleansers and Perenti Trust for the release of hazardous materials from the Property in violation of the RIDEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste

Regulations”), the RIDEM’s *Rules and Regulations for the Investigation and Remediation of Hazardous Materials Releases* (the “Remediation Regulations”) and the RIDEM’s *Rules and Regulations for Groundwater Quality* (the “Groundwater Regulations”).

- (5) WHEREAS, Hoxsie Cleansers and Perenti Trust filed an appeal of the 2011 NOV with the RIDEM’s Administrative Adjudication Division (“AAD”), which is still pending at the AAD.
- (6) WHEREAS, on 5 July 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 “Title Agreement”). In accordance with Paragraph 9 of the Title 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 RIDEM.
- (7) WHEREAS, on 28 August 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.
- (8) WHEREAS, on 28 August 2013, the Rhode Island Secretary of State revoked the Certificate of Incorporation/Authority for Hoxsie Cleansers. Gloria Perenti is listed as the president of Hoxsie Cleansers.
- (9) WHEREAS, on 2 October 2014, the RIDEM issued an Amended Notice of Violation (the “2014 NOV”) to Respondents.
- (10) WHEREAS, on 6 November 2014, the Rhode Island Secretary of State revoked the Certificate of Incorporation/Authority for Hoxie Corporation, Inc. Russell Yates is listed as the incorporator of Hoxsie Corporation, Inc.
- (11) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the 2014 NOV as it pertains to the Yates Trust and Hoxsie Corp and to effect a timely and amicable resolution of the 2014 NOV, the RIDEM and Yates hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the 2014 NOV.
- (12) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement of all claims against Yates Trust and Hoxsie Corp and adequately protects the public interest in accordance with the RIDEM’s Hazardous Waste Regulations, the RIDEM’s Remediation Regulations and the RIDEM’s Groundwater Regulations.
- (13) WHEREAS, this Agreement does not release or dismiss the 2014 NOV as it pertains to Hoxsie Cleansers, Perenti Trust, or Gloria Perenti.

C. AGREEMENT

- (1) **JURISDICTION** – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Yates.
- (2) **FORCE and EFFECT** – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(vi).
- (3) **APPLICATION** – The provisions of this Agreement shall apply to and be binding upon RIDEM, Yates and his agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Yates in the performance of work relating to or impacting the requirements of this Agreement.
- (4) **RECORDING OF AGREEMENT** – **Within 10 days of the receipt of the fully executed Agreement from the RIDEM**, Yates shall record this Agreement with the Office of Land Evidence Records in the city of Warwick, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of Yates.
- (5) **CONDITIONS** –
 - (a) **Within 9 months of execution of this Agreement**, Yates shall submit to the RIDEM Office of Waste Management (“OWM”) a letter identifying at a minimum 2 alternatives to remediate the soil and groundwater contamination on the Property as described in the 2014 NOV that satisfies the requirements of the RIDEM’s Remediation Regulations.
 - (b) Upon receipt of a Remedial Approval Letter (“RAL”) or Order of Approval (“OA”) from the 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 RIDEM’s Remediation Regulations.
 - (c) Penalty – Yates shall pay to the RIDEM the sum of **\$24,000** in administrative penalties assessed as follows:
 - (i) **By 1 December 2017**, pay to the RIDEM the sum of **\$24,000**.
 - (ii) Penalties that Yates agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

(iii) In the event that Yates fails to remit to the RIDEM a payment on or before its due date, that payment will be considered late and Yates will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12% per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance)

This provision does not preclude the RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

(iv) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Environmental Response Fund Account***. All payments shall be delivered to:

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

(6) **RIGHT OF ACCESS** – Yates provides to the 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. Yates 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. Yates 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 2014 NOV. Upon Yates' successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the 2011 NOV and the Agreement to Yates for recording. The recordings shall be at the sole expense of Yates.
- (2) **FAILURE TO COMPLY** – In the event that Yates fails to comply with items specified in Section C(5)(a) or C(5)(b) of the Agreement, Yates shall pay a stipulated penalty of \$500 per month for each and every month during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such

penalty. The payment of a penalty in accordance with this section shall not preclude the RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).

- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Yates of any obligation to comply with any other applicable laws or regulations administered by, through or for the 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 discovery of any new information, the 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. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that Yates may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Yates from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the 2011 NOV and the 2014 NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Tracey D’Amadio Tyrrell, Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street, Providence, RI 02908
(401) 222-1360, ext. 7407

Joseph J. LoBianco, Esq.
RIDEM Office of Legal Services
235 Promenade St., Providence, RI 02908
(401) 222-6607, ext. 2023

Brian R. Cunha, Esq.
Brian Cunha & Associates
311 Pine Street
Fall River, MA 02720
(508) 675-9500

- (a) At any time prior to full compliance with the terms of this Agreement, Yates agrees to notify the 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.

- (b) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) 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 the RIDEM in writing at least fifteen days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (10) 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 Russell Yates

By: _____ (Print Name)

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2017, before me personally appeared Russell Yates to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

Notary Public
My Commission Expires: _____

For the State of Rhode Island Department of
Environmental Management

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____