



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
CONTAMINATED SITE REMEDIATION & REDEVELOPMENT
DIVISION OF ENFORCEMENT, TECHNICAL & FINANCIAL SUPPORT

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PHILIP D. MURPHY

Governor

SHAWN M. LATOURETTE

Commissioner

SHEILA Y. OLIVER

Lt. Governor

**IN THE MATTER OF THE
NEW SWIFT CLEANERS SITE
101 PATERSON STREET
NEW BRUNSWICK CITY
MIDDLESEX COUNTY
PROGRAM INTEREST NO. 002989**

SETTLEMENT AGREEMENT

AND

CAPPELLETTI PROPERTIES, LLC.

This Settlement Agreement is issued pursuant to the authority vested in the Department of Environmental Protection of the State of New Jersey (“Department” or “DEP”) by N.J.S.A. 13:1D-1 through 19, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.11z (“Spill Act”), and duly delegated to the Director of the Division of Enforcement, Technical & Financial Support within the Contaminated Site Remediation & Redevelopment Program pursuant to N.J.S.A. 13:1B-4, and pursuant to the authority vested in the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) pursuant to the Spill Act.

1. The New Swift Cleaners site is located at 101 Paterson Street and is also known as Block 23.01, Lot 10.02 (previously known as Lots 10 and 10.01) on the tax maps of the City of New Brunswick, Middlesex County, which the Department refers to as Site Remediation Program Interest Number 002989 (“Site”). The Site and all other areas to which any hazardous substance discharged on the Site has migrated shall hereinafter be referred to as the “Contaminated Site”.
2. Cappelletti Properties, LLC, (“Cappelletti Properties”) is a limited liability company organized and existing under the laws of the State of New Jersey with a business address of 18 Den Herder Drive, Somerset, New Jersey 08873.
3. Cappelletti Properties is owned by Alfred Cappelletti and Richard Cappelletti.
4. Alfred Cappelletti and Richard Cappelletti owned the Site from July 15, 2005 until May 16, 2013 at which time, the Site was conveyed to Cappelletti Properties. Cappelletti Properties has owned the Site from May 16, 2013 through the present.

5. Hereinafter, “Cappellettis” shall refer collectively to Alfred Cappelletti, Richard Cappelletti and Cappelletti Properties.
6. On July 31, 2013, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (“AONOCAPA”), Enforcement Action ID #PEA 130002-002989, to Alfred Cappelletti and Richard Cappelletti, as well as Harry Miller and Margaret Miller (“Millers”), former owners of the Site, jointly and severally, for violations of the Spill Act, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. The Department also assessed civil administrative penalties in the amount of \$80,000.00 (the “Penalties”).
7. The Cappellettis failed to request a hearing on the AONOCAPA; thus, the AONOCAPA became a Final Agency Order against Alfred Cappelletti and Richard Cappelletti on or about September 3, 2013, pursuant to N.J.A.C. 7:26C-9.9(b)(1).
8. On May 12, 2016, the Department filed a First Priority Lien (Docketed Judgment No. DJ-078514-16), in the amount of \$341,447.71 (“Original Lien”), against the Site pursuant to the Spill Act, N.J.S.A. 58:10-23.11f and/or g, for the Department’s unreimbursed past cleanup and removal costs as of that date. The Department included Cappelletti Properties in the list of responsible parties for the Original Lien. In or about May 2018, the Department received \$80,386.00 from RWJ Property Holding Corporation (“RWJ”) and \$58,464.00 from WSH Enterprises, Inc. (“WSH”), both former owners of the Contaminated Site, for a total of \$138,850.00 in reimbursement against the Past Cleanup and Removal Costs. The Department amended the original First Priority Lien (the same Docketed Judgment No. DJ-078514-16) on January 23, 2019, to reduce the amount of the Original Lien to \$202,597.71 (the “Lien”) to take the two (2) 2018 settlement payments made to the Department by RWJ and WSH into consideration. The current amount of the lien is \$202,597.71 (as of the date last docketed).
9. Following the filing of the Original Lien, the Department continued to accrue cleanup and removal costs including: annual remediation fees; legal fees incurred by the Division of Law of the New Jersey Attorney General’s Office (“DOL”); and Department case management costs. As of January 31, 2022, the Department incurred a total of \$425,659.02 in cleanup and removal costs in connection with the Contaminated Site (“Past Cleanup and Removal Costs”). The \$138,850.00 in settlement payments from RWJ and WSH, plus an additional payment of \$339.41 for certain fees, which was made by RWJ University Hospital-New Brunswick on or about March 5, 2018, leave a total outstanding amount of \$286,469.61 due against the Site as of January 31, 2022 (i.e. the total Past Cleanup and Removal Costs).
10. The Department and the Cappellettis wish to resolve this matter without further adjudication and by entering into this Agreement, do resolve the civil administrative penalties (i.e. the Penalties, as referenced above) and the Department’s Cleanup and Removal Costs (i.e. all Past Cleanup and Removal Costs, as well as the Lien, as referenced above, and any cleanup and removal costs accrued, or accruing after January 31, 2022).



11. Within 30 days after the Effective Date of this Settlement Agreement, the Cappellettis shall pay the Department the total amount of \$75,000.00, as follows: \$20,000.00 in civil administrative penalties (i.e. the Penalties, as referenced above); and \$55,000.00 in reimbursement of the Department's Cleanup and Removal Costs (or, the Lien, as referenced above).
12. The Cappellettis shall pay the amount specified in paragraph 11 above by check made payable to "Treasurer, State of New Jersey" and shall mail the payment and any invoice remittance stub provided by the Department to the address on the invoice. In addition, the Cappellettis shall mail or otherwise deliver a copy of the check and said invoice remittance stub to Frank A. DeFeo, Assistant Director, Financial Services Element, Contaminated Site Remediation & Redevelopment Program, New Jersey Department of Environmental Protection, 401 East State Street, Mail Code 401-06K, P.O. Box 420, Trenton, New Jersey 08625-0420 and the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard Hughes Justice Complex, P.O. Box 093, 25 Market Street, 7th Floor, West Wing, Trenton, NJ 08625-0093.
13. Upon receipt of the payments the Cappellettis are making pursuant to paragraphs 11-12 above, the Department shall promptly file a Warrant of Satisfaction with the Clerk of the Superior Court to fully vacate the Lien (Docketed Judgment No. DJ-078514-16) which was filed against the Site. The Department shall provide each of the Cappellettis with a copy of same.
14. In consideration of the settlement payment the Cappellettis are making pursuant to paragraphs 11-12 above, the Department covenants not to sue and agrees not to otherwise take administrative action of any kind, whether under statute (including CERCLA and the Spill Act), regulation or common law (including assertion of another lien or any amended lien) against any of the Cappellettis for the civil administrative penalties assessed in the AONOCAPA (i.e. the Penalties, as referenced above), or reimbursement of any Past Cleanup and Removal Costs, or any alleged natural resources damages. For purposes of this Settlement Agreement, "Past Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, incurred by the Department on or before the Effective Date of this Settlement Agreement with regard to the Site.
15. This Settlement Agreement, when fully executed, will constitute an administrative settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C. § 9613(f)(2) for the purpose of providing protection to each of the Cappellettis from any contribution actions for the matters addressed in this Settlement Agreement. Each of the Cappellettis are entitled, upon fully satisfying its obligations under this Settlement Agreement, to protection from contribution actions or claims for the matters addressed in this Settlement Agreement.
16. In accordance with N.J.S.A. 58:10-23.11e2, on _____, the Department published notice of this Settlement Agreement in the New Jersey Register and on the Department's website, and arranged for notice, as described in the following paragraph, to other potentially



responsible parties for the Contaminated Site. Such notice included the following information:

- a. the caption of this matter;
 - b. the name and location of the Site;
 - c. the names of the Settling Parties as referenced herein;
 - d. a summary of the terms of the Settlement Agreement; and
 - e. that there are 60 days to comment on the proposed Settlement Agreement.
17. The Department, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Settlement Agreement to all other potentially responsible parties of whom the Department had notice as of the date the Department published notice of the proposed Settlement Agreement in this matter in the New Jersey Register in accordance with paragraph 16 above.
18. At the end of the 60-day comment period required under N.J.S.A. 58:10-23.11e2, the Department will sign this Settlement Agreement unless, as a result of the notice of the Settlement Agreement pursuant to paragraphs 16 and 17, the Department receives information that discloses facts or considerations that indicate to it, in its sole discretion, that the Settlement Agreement is inappropriate, improper or inadequate.
19. The Department reserves, and this Settlement Agreement is without prejudice to, all rights against the Cappellettis concerning all other unrelated matters.
20. Nothing in this Settlement Agreement shall preclude the Department from taking enforcement action against the Cappellettis for other violations that are not referenced herein or otherwise set forth in this Settlement Agreement.
21. Nothing in this Settlement Agreement restricts the ability of the Department to raise the above findings in any other proceeding.
22. Nothing in this Settlement Agreement shall be construed as precluding the Department from taking any action it deems necessary or appropriate to protect the public health and safety and the environment, and to enforce the laws of the State of New Jersey.
23. This Settlement Agreement shall be effective upon execution by the Department and the Cappellettis.
24. The Cappellettis agree to comply with this Settlement Agreement, which shall be enforceable as an order pursuant to the Spill Act and agree that if the obligations set forth herein are not satisfied in accordance with the terms hereinabove, the Department may bring a summary action in the Superior Court to collect the Penalties described in paragraph



6, above, pursuant to R. 4:67-6 and R. 4:70, or file this Settlement Agreement as a judgment under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

25. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Nothing in this Settlement Agreement shall be construed to waive any rights of the Cappellettis as against any other party responsible for the Contaminated Site.
26. The Cappellettis agree not to contest (a) the authority or jurisdiction of the Department to enter into this Settlement Agreement, and (b) the terms or conditions hereof, except that the Cappellettis do not waive any right to contest the interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce this Settlement Agreement.
27. This Settlement Agreement shall be binding on the Cappellettis and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of the Cappellettis.
28. Each undersigned representative and the Department certify that he or she is authorized to enter into this Settlement Agreement, and to execute and legally bind each party to this Settlement Agreement.
29. This Settlement Agreement may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Settlement Agreement.



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____

By: _____

David E. Haymes
Administrator, New Jersey Spill Compensation
Fund and Assistant Commissioner,
Contaminated Site Remediation & Redevelopment

CAPPELLETTI PROPERTIES, LLC.

Date: _____

By: _____

Printed Name: _____

Printed Title: _____

ALFRED CAPPELLETTI

Date: _____

By: _____

Printed Name: _____

Printed Title: _____

RICHARD CAPPELLETTI

Date: _____

By: _____

Printed Name: _____

Printed Title: _____

