



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Enforcement, Technical and Financial Support
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CATHERINE R. McCABE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

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

AND

WSH ENTERPRISES, INC.

ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order 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"), the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 to -31 ("Brownfield Act"), and duly delegated to the Acting Director of the Division of Enforcement, Technical & Financial Support within the Site Remediation and Waste Management 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.

FINDINGS

The Site

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."

Settling Party

2. WSH Enterprises, Inc. ("WSH") is a corporation organized and existing under the laws of the State of New Jersey with a business address of 8 Desmet Avenue, Milltown, New Jersey 08850.

Site Ownership

3. WSH owned the Site from April 19, 2001 until May 15, 2002.
4. Cappelletti Properties, LLC currently owns the Site.

The Department's Remediation Costs

5. On May 12, 2016, the Department filed a First Priority Lien (Docketed Judgment No. DJ-078514-16), in the amount of \$341,447.71, against the Site pursuant to the Spill Act, N.J.S.A. 58:10-23.11f and/or g, for the Department's unreimbursed cleanup and removal costs incurred in connection with the Contaminated Site. The Department included WSH in the list of responsible parties for the lien.

6. As of September 2, 2016, the Department has incurred \$358,473.77 in unreimbursed cleanup and removal costs in connection with the Contaminated Site.

Settlement

7. The Department and WSH wish to resolve this matter without further adjudication and by entering into this Administrative Consent Order agree to resolve the Department's unreimbursed cleanup and removal costs, without admission of fault or liability.

Definitions

8. Unless otherwise expressly provided, terms used in this Administrative Consent Order that are defined in the Spill Act, or in the regulations promulgated under this act, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Administrative Consent Order, the following definitions shall apply:

- a. "Future Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, which the Department has incurred, or will incur, after the Effective Date of this Administrative Consent Order, to remediate the Site.
- b. "Past Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs, the Department incurred on or before the Effective Date of this Administrative Consent Order.

NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:

Payment of Past Cleanup and Removal Costs

9. Within 30 days after the Effective Date of this Administrative Consent Order, or the receipt of the invoice remittance stub, whichever is later, WSH shall pay the Department \$58,464.00 in reimbursement of the Department's in Past Cleanup and Removal Costs.

10. WSH shall pay the amount specified in paragraph 9 above by check made payable to "Treasurer, State of New Jersey" and shall mail the payment and invoice remittance stub to the address on the invoice. In addition, WSH shall mail or otherwise deliver a copy of the check and invoice remittance stub to Frank A. DeFeo, Acting Assistant Director, Financial Services

Element, Site Remediation and Waste Management Program, New Jersey Department of Environmental Protection, Mail Code 401-06A, 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.

The Department's Covenants

11. Upon receipt of the payment WSH is making pursuant to paragraph 9 above, the Department will promptly file a Warrant of Satisfaction with the Clerk of the Superior Court to remove WSH from the list of responsible parties for the First Priority Lien (Docketed Judgment No. DJ-078514-16) filed against the Site.

12. In consideration of the payment WSH is making pursuant to paragraph 9 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 a lien) against WSH for reimbursement of Past Cleanup and Removal Costs.

Contribution Protection

13. This Administrative Consent Order, 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 WSH from contribution actions for the matters addressed in this Administrative Consent Order, which are Past Cleanup and Removal Costs. WSH is entitled, upon fully satisfying its obligations under this Administrative Consent Order, to protection from contribution actions or claims for the matters addressed in this Administrative Consent Order.

14. In accordance with N.J.S.A. 58:10-23.11e2, on June 18, 2018 the Department published notice of this Administrative Consent Order 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. Such notice included the following information:

- a. the caption of this matter;
- b. the name and location of the Site;
- c. the name of the Settling Parties;
- d. a summary of the terms of this Administrative Consent Order; and
- e. that there are 60 days to comment on the proposed Administrative Consent Order.

15. The Department, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Administrative Consent Order to all other potentially responsible parties of whom the Department had notice as of the date the Department published notice of the proposed Administrative Consent Order in this matter in the New Jersey Register in accordance with paragraph 14 above.

16. At the end of the 60-day comment period required under N.J.S.A. 58:10-23.11e2, the Department will sign this Administrative Consent Order unless, as a result of the notice of this Administrative Consent Order pursuant to paragraphs 14 and 15, the Department receives information that discloses facts or considerations that indicate to it, in its sole discretion, that the Administrative Consent Order is inappropriate, improper or inadequate.

The Department's Reservations

17. The covenant contained in paragraph 12 above does not pertain to any matters other than those expressly stated. The Department reserves, and this Administrative Consent Order is without prejudice to, all rights against WSH concerning all other matters, including the following:

- a. claims based on the WSH's failure to satisfy any term or provision of this Administrative Consent Order;
- b. liability arising from the WSH's past, present or future discharge or unsatisfactory storage or containment of any hazardous substance outside the Site;
- c. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by WSH at the Site;
- d. criminal liability;
- e. liability for any violation by WSH of federal or state law that occurs during or after the remediation of the Site;
- f. liability for any claim filed against the Spill Fund concerning the Site; and
- g. liability for Future Cleanup and Removal Costs.

WSH's Reservations

18. WSH reserves all rights and defenses with respect to any action taken by the Department pursuant to paragraph 17 above.

19. WSH retains all rights it may have against any other responsible parties for costs and other causes of action related to the investigation and remediation of the Contaminated Site.

General Provisions

20. The Department reserves and this Administrative Consent Order is without prejudice to, all rights against WSH concerning all other matters.

21. This Administrative Consent Order shall be fully enforceable in the Superior Court of New Jersey as a Final Order upon the filing of a summary action for compliance pursuant to R. 4:67-1, et seq. This Administrative Consent Order shall also be enforceable in the same fashion as an Administrative Order issued by the Department pursuant to the Spill Act.

22. Nothing in this Administrative Consent Order 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. Nothing in this Administrative Consent Order shall restrict the ability of the Department to raise or make the above findings in any other proceeding.

24. Nothing in this Administrative Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Administrative Consent Order.

25. WSH consents to entry of this Administrative Consent Order and waives its right to request an administrative hearing concerning the terms of this Administrative Consent Order pursuant to N.J.A.C. 7:26C-9.10.

26. WSH agrees not to contest (a) the authority or jurisdiction of the Department to enter into this Administrative Consent Order, and (b) the terms or conditions hereof, except that WSH does not waive its right to contest the interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce this Administrative Consent Order.

27. This Administrative Consent Order shall be binding on WSH and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity, of WSH.

28. Each undersigned representative of WSH and the Department certifies that he or she is authorized to enter into this Administrative Consent Order, and to execute and legally bind each party to this Administrative Consent Order.

29. This Administrative Consent Order 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 Administrative Consent Order.

30. The Effective Date of this Administrative Consent Order shall be the date that both WSH and the Department have executed this Administrative Consent Order.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____

By: _____

David E. Haymes
Administrator, New Jersey Spill Compensation
Fund and Acting Director, Division of Enforcement,
Technical & Financial Support

WSH ENTERPRISES, INC.

Date: _____

By: _____

Printed Name: _____

Printed Title: _____