IN THE MATTER OF
THE ROXBURY AUTO WRECKERS SITE,
364 WEST DEWEY AVENUE, KENVIL
SECTION OF ROXBURY TOWNSHIP,
MORRIS COUNTY,
PI# G000024075

and

FIRST PRIORITY SPILL ACT LIEN DJ-
112714-96

This Settlement Agreement is issued pursuant to the authority vested in the Department of Environmental Protection of the State of New Jersey (“Department”) by N.J.S.A. 13:1D-1 to -19, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 (“Spill Act”), and duly delegated to the Director of the Division of Enforcement, Technical & Financial Support within the Site Remediation and Waste Management Program of the Department pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Roxbury Auto Wreckers site is located at 364 West Dewey Avenue, Kenvil section of Roxbury Township, Morris County, New Jersey 07847, and is also known as Block 7101, Lots 30 & 31 (formerly Block 10, Lots 19.3 and 19.4) on the tax map of the Township of Roxbury Property.

2. RAW, Inc. t/a Roxbury Auto Wreckers (“RAW”) is a corporation organized in the State of New Jersey with principal offices at 364 West Dewey Avenue, Kenvil, New Jersey 07847.

3. RAW is the current owner of the Property, having acquired title on June 22, 1987.

4. The Department and the New Jersey Spill Compensation Fund (the “Spill Fund”) contend that they have incurred cleanup and removal costs in connection with the discharge of hazardous substances at the Property.

5. On January 2, 1996, the Department entered into an Administrative Consent Order
with RAW and Warren Potter, concerning the Site (“1996 ACO”)¹.

6. On or about June 3, 1996, the Department filed a First Priority Lien in the amount of $5,268.70 against the Property 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 in connection with the Site at that time (“1996 First Priority Lien”). The 1996 First Priority Lien was filed and docketed as Docketed Judgment No. DJ-112714-96². (Attachment 1).

7. On or about February 5, 2015, the Department issued a Demand for Stipulated Penalties to RAW and Warren Potter in the amount of $110,300.00, pursuant to paragraph 54(c) of the 1996 ACO (“2015 Demand for Stipulated Penalties”).

8. On June 26, 2015, the Department entered into a Settlement Agreement with RAW and Warren Potter, in the amount of $82,725.00 (“2015 Settlement Agreement”), thereby settling the 2015 Demand for Stipulated Penalties.

9. On or about May 20, 2016, the Department filed a Notice of Amended and Revived First Priority Lien, Docketed Judgment No. DJ-112714-96, to reflect the entirety of the Department’s $27,105.31 in unreimbursed cleanup and removal costs incurred in connection with the Site as of May 2016³. (Attachment 2).


11. As of January 17, 2017, the Department has incurred a total of $28,148.98 in unreimbursed cleanup and removal costs as a result of the discharge of hazardous substances at the Site.

Definitions

12. Unless otherwise expressly provided, terms used in this Settlement Agreement 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 Settlement Agreement, the following definitions shall apply:

"Future Cleanup and Removal Costs" shall mean all costs, including direct and indirect costs that the Department will incur, after the Effective Date of this Settlement Agreement.

"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 Settlement Agreement, to remediate the Site.

“Settling Party” shall mean RAW, and shall include all of RAW’s current and past

¹ The 1996 ACO was executed by “Roxbury Auto Wreckers, Inc. a/k/a R.A.W., Inc. t/a Roxbury Auto and Warren Potter.”
² “RAW, Inc./Roxbury Auto Wreckers” is listed as the discharger on the 1996 First Priority Lien.
³ The Notice of Amended and Revived First Priority Lien lists “RAW, Incorporated f/k/a Warich Mobile Crushing, Inc. a/k/a Roxbury Auto Wreckers” as the “Discharger(s)/Person(s) in any way responsible.”
officers, directors, employees, predecessors, parents, successors, subsidiaries, partners, shareholders, including Warren Potter, assigns, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity.

"Property" shall mean the approximately 19.13 acres of real property located at 364 West Dewey Avenue, Kenvil section of Roxbury Township, Morris County, this property being also known and designated as Block 7101, Lots 30 & 31 (formerly Block 10, Lots 19.3 and 19.4) on the Tax Map of the Township of Roxbury.

“Site” shall mean the Property, as defined above, and all other areas where any hazardous substance discharged there has become located, which the Department has also designated as Site Remediation Program Interest No. G000024075.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

**RAW’s Commitments**

13. RAW, within 20 days after the Effective Date of this Settlement Agreement, shall confirm in writing that it is withdrawing its challenge of the First Priority Lien (Docketed Judgment No. DJ-112714-96) filed against the Property.

14. Within 30 days after the Effective Date of this Settlement Agreement, RAW shall pay the Department $7,196.20 in reimbursement in full satisfaction of the Department’s Past Cleanup and Removal Costs associated with the Site.

15. RAW shall pay the amount specified in Paragraph 14 above by certified or cashier’s check made payable to “Treasurer, State of New Jersey.” Payment, along with an invoice that will be provided to RAW by the Department attached thereto, shall be mailed to the address on the invoice.

16. In addition, RAW shall mail or otherwise deliver a copy of the check and invoice to 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**

17. Upon receipt of the payment RAW is making pursuant to Paragraph 14 above, and the Settling Party’s withdrawal of its challenge to the Department’s May 20, 2016 Amended and Revived First Priority Lien, the Department will promptly file a Warrant of Satisfaction with the Clerk of the Superior Court for the 1996 First Priority Lien, as amended and revived by the May 20, 2016 Amended and Revived First Priority Lien (Docketed Judgment No. DJ-112714-96) filed against the Property.

18. In consideration of the payment RAW is making pursuant to Paragraph 14 above, and RAW’s withdrawal of its challenge to the Department’s First Priority Lien, the Department covenants not to sue, and agrees not to otherwise take administrative action of any kind, whether
under statute, regulation or common law, including the filing of a lien, against the Settling Party for further reimbursement of Past Cleanup and Removal Costs.

19. When fully executed, this Settlement Agreement 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 the Settling Party from contribution actions for the matters addressed in this Settlement Agreement, which are Past Cleanup and Removal Costs. The Settling Party is 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.

20. In accordance with N.J.S.A. 58:10-23.11e.2, on November 6, 2017, 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. Such notice included the following information:

   a. the name and location of the Site;
   b. the name of the Settling Party;
   c. a summary of the terms of this Settlement Agreement; and
   d. that there are 60 days to comment on the proposed Settlement Agreement.

21. The Department, in accordance with N.J.S.A. 58:10-23.11e.2, 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 in this matter in the New Jersey Register in accordance with paragraph 20 above.

22. At the end of the 60-day comment period required under N.J.S.A. 58:10-23.11e.2, the Department will sign this Settlement Agreement unless, as a result of the notice of this Settlement Agreement pursuant to Paragraphs 20 and 21, the Department receives information that discloses facts or considerations that indicate to it, in the Department’s sole discretion, that the Settlement Agreement is inappropriate, improper or inadequate.

The Department’s Reservations

23. Notwithstanding any other provision of this Settlement Agreement, the Department reserves, and this Settlement Agreement is without prejudice to, the Department’s right to sue or take administrative action to compel the Settling Party to further remediate the Site, or to reimburse the Department for any additional costs and damages incurred by the Department after the Effective Date, if, before a licensed site remediation professional issues a Response Action Outcome pursuant to N.J.S.A. 58:10C-14.d and N.J.A.C. 7:26C-6.2(a) for the Site:

   i. The Department discovers conditions at the Site; or
   ii. The Department receives information, previously unknown to it in whole or in part; and
iii. These previously unknown conditions or information, together with any other relevant information, indicate that the remedial action selected for the Site is not protective of human health and safety, or the environment.

24. Notwithstanding any other provision of this Settlement Agreement, the Department reserves, and this Settlement Agreement is without prejudice to, the Department's right to sue or take administrative action to compel the Settling Party to further remediate the Site, or to reimburse the Department for any additional costs and damages incurred by the Department after the Effective Date, if after a licensed site remediation professional issues a Response Action Outcome pursuant to N.J.S.A. 58:10C-14.d and N.J.A.C. 7:26C-6.2(a) for the Site:

i. The Department discovers conditions at the Site previously unknown to it; or

ii. The Department receives information previously unknown to it, in whole or in part; and

iii. these previously unknown conditions or information, together with any other relevant information, indicate that the remedial action implemented at the Site is not protective of human health and safety, or the environment.

25. For the purposes of Paragraph 23, the information and the conditions known to the Department shall include only the information and conditions known to the Department as of the date an approved Remedial Action Workplan is issued for the Site from a licensed site remediation professional.

26. For the purposes of Paragraph 24, the information and the conditions known to the Department shall include only the information and conditions known to the Department as of the date a licensed site remediation professional issues a Response Action Outcome for the Site.

27. Notwithstanding any other provision of this Settlement Agreement, the Department retains all authority, and reserves all rights, to undertake any further remediation authorized by law concerning the Site, or to direct the Settling Party to undertake any remediation authorized by law concerning the Site, and the Settling Party reserves all rights and defenses with respect thereto.

28. The covenants contained in Paragraph 18 above do not pertain to any matters other than those expressly stated in this Settlement Agreement. The Department reserves, and this Settlement Agreement is without prejudice to, all rights against the Settling Party concerning all matters not expressly stated in this Settlement Agreement, including the following:

a. claims based on the Settling Party’s failure to satisfy any term or provision of this Settlement Agreement;

b. liability arising from the Settling Party’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 the Settling Party at the Property;

d. Future Cleanup and Removal Costs;

e. criminal liability;

f. the requirements of the 1996 ACO and the 2015 Settlement Agreement;

g. natural resource damages;

h. liability for any violation by the Settling Party of federal or state law that occurs during or after the remediation of the Site;

i. liability for any violation by the Settling Party of the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and/or the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; and

j. liability for any claim filed against the Spill Fund concerning the Site.

29. The covenants contained in Paragraphs 18 above do not pertain to any matters other than those expressly stated in this Settlement Agreement. The Department reserves, and this Settlement Agreement is without prejudice to, claims based on the Settling Party’s failure to satisfy any term or provision of this Settlement Agreement.


RAW’s Reservations

31. The Settling Party reserves all rights and defenses with respect to any action taken by the Department pursuant to Paragraphs 27, 28 and 29, above.

General Provisions

32. For the avoidance of doubt, the matters addressed in this Settlement Agreement do not include innocent party grant issues that are subject of the appeal filed with the Superior Court of New Jersey, Appellate Division, Docket No. A-002844-16 by RAW, Inc. a/k/a Roxbury Auto Wreckers on or about March 8, 2017, or any other pending appeal filed by the Settling Party concerning the Site, or the hearing request filed with the Department by RAW, Inc. on or about February 15, 2017, contesting the Department’s denial of RAW, Inc.‘s innocent party grant application.

33. Nothing in this Settlement Agreement shall be construed as an admission by the Settling Party or a finding by the Department or the Spill Fund of any wrongdoing or liability on the part of RAW for the discharge of hazardous substances at or from the Site.

34. The Department reserves, and this Settlement Agreement is without prejudice to, all rights against the Settling Party concerning all matters not addressed in this Settlement Agreement, and to which the Settling Party reserves all rights and defenses.
35. 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 environmental laws of the State of New Jersey.

36. Nothing in this Settlement Agreement shall restrict the ability of the Department to raise or make the above findings in any other proceeding to the extent not inconsistent with this Agreement.

37. 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.

38. The Settling Party agrees 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 Settling Party 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 Settlement Agreement.

39. This Settlement Agreement shall be binding on the Settling Party and any successors, subsidiaries, assigns, trustees in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of the Settling Party.

40. The undersigned representatives of the Settling Party 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.

41. 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.

42. No modification or waiver of the Settlement Agreement shall be effective except upon written amendment of the Settlement Agreement duly executed by all the parties.

43. This Settlement Agreement shall be governed by and interpreted under the laws of the State of New Jersey.
44. The Effective Date of this Settlement Agreement shall be the latter of the date(s) that the Settling Party and the Department have respectively executed this Settlement Agreement.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: ________________  By: ____________________________________________

Anthony J. Farro, Director
Division of Enforcement, Technical & Financial Support

RAW, INC. T/A ROXBURY AUTO WRECKERS

Date: ________________  ________________________________

Name: ____________________________

Title: ____________________________