

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 4

92687



IN THE MATTER OF:	)	AGREEMENT
	)	
Alaric Area Ground Water Plume	)	U.S. EPA Region 4
Tampa, Hillsborough County, Florida	)	CERCLA Docket No. CER-04-2002-3775
	)	
Lee W. Oglesby, Sr. and Carolyn M. Oglesby,	)	PROCEEDING UNDER SECTION
as individuals;	)	122(h)(1) OF CERCLA
Lee W. Oglesby, Sr. Living Trust, dated	)	42 U.S.C. §9622(h)(1)
September 22, 1998, as amended;	)	
Lee W. Oglesby, Sr., as trustee and beneficiary	)	
of the Lee W. Oglesby, Sr. Living Trust, dated	)	
September 22, 1998, as amended; and	)	
Successor trustees of the Lee W. Oglesby, Sr. Living	)	
Trust, dated September 22, 1998, as amended,	)	
	)	
	)	
SETTLING PARTIES	)	

**I. JURISDICTION**

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated through the Director, Waste Management Division, to the Chief, Waste Programs Branch. This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Associate Attorney General, U.S. Department of Justice ("DOJ").

2. This Agreement is made and entered into by EPA and Lee W. Oglesby, Sr., as an individual; Carolyn M. Oglesby, as an individual; Lee W. Oglesby, Sr. Living Trust, dated September 22, 1998 as amended (the "Trust"); Lee W. Oglesby, Sr., as trustee and beneficiary of the Trust; and successor trustees to the Trust, but as to such successor trustees, only in their capacity as legal title holder of the Property and in no other capacity ("Settling Parties"). Settling Parties consent to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. This Agreement concerns the Alaric Area Ground Water Plume Superfund Site ("Site"), located in Tampa, Hillsborough County, Florida, which was listed on the National Priorities List (NPL) on December 1, 2000 (65 Fed. Reg. 75,179). EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

5. In performing response action at the Site, EPA has incurred Response Costs and will incur additional response costs in the future.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for Response Costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by Settling Parties to determine whether Settling Parties are financially able to pay Response Costs incurred and to be incurred at the Site. Based upon this financial information, EPA has determined that Settling Parties are able to pay the amounts specified in Section VII without undue financial hardship. Settling Parties have made and continue to assert a claim of confidentiality as to the records submitted by them in connection with this matter, pursuant to Section 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. § 9604(e)(7)(E) and (F), 40 C.F.R. § 2.203, 18 U.S.C. § 1905, and 5 U.S.C. § 552(b)(4). EPA has not made any finding as to the validity of this assertion by Settling Parties.

8. EPA and Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any fact, liability, or legal argument. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

## **III. PARTIES BOUND**

9. This Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status of Settling Parties, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Parties' responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

#### **IV. STATEMENT OF PURPOSE**

10. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties to make cash payments to resolve their alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for injunctive relief with regard to the Site and for Response Costs incurred and to be incurred at or in connection with the Site, subject to the reservations of rights included in Section XI (Reservations of Rights by EPA).

#### **V. DEFINITIONS**

11. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Existing Contamination" shall mean (1) any hazardous substances, pollutants, or contaminants present or existing on or under the Property as of the effective date of this Agreement; (2) any hazardous substances, pollutants, or contaminants that migrated from the Property prior to the effective date of this Agreement; and (3) any hazardous substances, pollutants, or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

f. "Financial Information" shall mean those financial documents identified in Appendix C.

g. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

i. "Parties" shall mean EPA and Settling Parties.

j. "Property" shall mean the property located at 2110 North 71st Street in Tampa, Florida, identified as Lot 28 of Bunchville Subdivision, according to the plat in Deed Book C, Page 203 of the Public Records of Hillsborough County, Florida.

k. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, the United States has incurred and will incur in connection with the Site.

l. "Section" shall mean a portion of this Agreement identified by a roman numeral.

m. "Settling Parties" shall mean Lee W. Oglesby, Sr., as an individual; Carolyn M. Oglesby, as an individual; Lee W. Oglesby, Sr. Living Trust, dated September 22, 1998, as amended (the Trust); Lee W. Oglesby, Sr., as trustee and beneficiary of the Trust; and successor trustees to the Trust to the extent that the sole basis for liability of any successor trustee is due to its capacity as a trustee holding legal title to the Property, and not due to independent grounds for liability.

n. "Site" shall mean the Alaric Area Groundwater Plume Superfund site, comprised of the approximately 1.01- acre Alaric property, located at 2110 North 71<sup>st</sup> Street, in Tampa, Hillsborough County, Florida, and all areas where the hazardous substances, pollutants, and/or contaminants have been deposited, stored, disposed, or placed, or have otherwise come to be located, in the vicinity of and including the area generally shown on the map included in Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

## **VI. GENERAL PROVISIONS**

12. Settling Parties shall provide to EPA written notice of their intent to transfer any interest in the Property 60 days prior to such transfer, including the name and address of any party accepting such transfer, and shall provide a copy of this Agreement to such party.

## **VII. REIMBURSEMENT OF RESPONSE COSTS**

13. Settling Parties shall pay to the EPA Hazardous Substance Superfund the principal sum of \$100,000, plus an additional sum for Interest as explained below. Payment shall be made in three (3) installments. Each installment, except for the first, on which no interest shall be due, shall

include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the sixty-first day after the effective date of this Agreement. The first payment of \$33,333 shall be due within 60 days of the effective date of this Agreement as defined by Section XXI. The second payment of \$33,333, plus interest, shall be due 24 months from the due date of the first payment. The third payment of \$33,334, plus interest, shall be due 36 months from the due date of the first payment. Settling Parties may accelerate any or all of these payments, and Interest due on the accelerated payments shall be reduced accordingly. Each payment shall be made by cashier's or certified check, made payable to the "Hazardous Substance Superfund," to the following address:

U.S. EPA – Region 4  
Superfund Account  
Attention: Collection Officer for Superfund  
P.O. Box 100142  
Atlanta, Georgia 30384

Each payment shall be designated as "Response Costs" – Alaric Area Ground Water Plume Site and shall reference the payor's name and address, the EPA site identification number A4E3, and the EPA Docket Number for this action.

Settling Parties shall simultaneously transmit a copy of the check for each payment to:

Paula Batchelor  
U.S. EPA – Region 4,  
CERCLA Program Services Branch  
Waste Management Division  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Each payment made pursuant to Paragraph 13 shall be deposited in the Alaric Area Ground Water Plume Superfund Site Special Account, within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site. Any balance remaining in the Alaric Area Ground Water Plume Superfund Site Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund.

### **VIII. MOTION TO DISMISS PETITION FOR REVIEW OF SITE'S NPL LISTING**

14. Within 10 days of the effective date of this Agreement, Settling Parties Lee W. Oglesby, Sr. and Carolyn M. Oglesby shall file a motion to dismiss with prejudice their appeal in Lee and Carolyn Oglesby v. U.S. Environmental Protection Agency (D.C. Cir.), Case No. 01-1091, which concerns Lee W. Oglesby, Sr.'s and Carolyn M. Oglesby's Petition for Review of EPA's rule amending the National Priorities List (NPL) for Uncontrolled Hazardous Waste Sites to add the Alaric Area Ground Water Plume Site. 65 Fed. Reg. 75,179 (December 1, 2000).

## **IX. FAILURE TO COMPLY WITH AGREEMENT**

15. If Settling Parties fail to make any payment under Paragraph 13 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

16. If any amounts due under Paragraph 13 are not received by the required date, Settling Parties shall be in violation of this Agreement and shall pay, in addition to the Interest required by Paragraphs 13 and 15, a stipulated penalty of \$500 (five hundred dollars) per violation per day that such payment is late.

17. Stipulated penalties are due and payable within 30 days of the date of written demand for payment of the penalties. All payments of stipulated penalties under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Parties, the Site name, the EPA Region and Site/Spill ID #A4E3, and the EPA docket number for this action, and shall be sent to:

U.S. EPA, Region 4  
Attention: Collection Officer for Superfund  
Superfund Account  
P.O. Box 100142  
Atlanta, Georgia 30384

At the time of each payment, Settling Parties shall send notice that such payment has been made to Paula Batchelor at the address listed in Paragraph 13.

18. Stipulated penalties shall accrue as provided above regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon written demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

19. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties' failure to comply with the requirements of this Agreement, if Settling Parties fail or refuse to comply with any term or condition of this Agreement, they shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Parties shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Parties from payment as required by Paragraph 13 or from performance of any other requirements of this Agreement.

#### **X. COVENANT NOT TO SUE BY EPA**

21. Except as specifically provided in Section XI (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of the first payment required by Section VII, Paragraph 13 (Reimbursement of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement, including, but not limited to, payment of all amounts due under Section VII (Reimbursement of Response Costs) and any amounts due under Section IX (Failure to Comply with Agreement) and compliance with the requirements of Paragraphs 12 and 14. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Parties. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Parties shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Parties' false or materially inaccurate information. This covenant not to sue extends only to Settling Parties and does not extend to any other person, except that if the obligations of Settling Parties are met under this Agreement, then EPA agrees not to seek any other payment from the estates of Lee W. Oglesby, Sr. and Carolyn M. Oglesby on account of any matter covered by this Agreement.

#### **XI. RESERVATIONS OF RIGHTS BY EPA**

22. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 21. Notwithstanding any other provision of this Agreement, EPA specifically reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. any liability resulting from the release or threat of release, after the effective date of this Agreement, of hazardous substances, pollutants, or contaminants at the Site, not within the definition of "Existing Contamination," as defined in Section V (Definitions);

e. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;

f. implementation of any institutional controls, including land/water use restrictions, which EPA determines are necessary to implement a remedy at the Site or to ensure its integrity or environmental protectiveness, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606; and

g. liability, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for all costs incurred by the United States in obtaining and/or implementing institutional controls pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

23. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by Settling Parties, or the financial certification made by Settling Parties in Paragraph 37(d), is false or, in any material respect, inaccurate.

24. Except as specifically stated in Paragraph 21, nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation, or other entity not a signatory to this Agreement.

## **XII. COVENANT NOT TO SUE BY SETTLING PARTIES**

25. Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of responses activities at the Site, (except that Settling Parties reserve, and this Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to



the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response action. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA); and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

26. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

27. Settling Parties agree not to assert any claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person.

### **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

28. Except as provided in Paragraph 27, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. Except as specifically provided in Paragraph 21, EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

29. The Parties agree that the Settling Parties and, if the obligations of the Settling Parties are met under this Agreement, the estates of Lee W. Oglesby, Sr. and Carolyn M. Oglesby, are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all Response Costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person.

30. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 21.

#### **XIV. SITE ACCESS**

31. Commencing upon the effective date of this Agreement, Settling Parties agree to provide EPA and its representatives and contractors access at all reasonable times to the Site and to any other property owned or controlled by Settling Parties to which access is determined by EPA to be required for the implementation of this Agreement, or for the purpose of conducting any response activity related to the Site, including, but not limited to:

- a. Monitoring, investigation, removal, remedial, or other activities at the Site;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site; and
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Parties or their agents, consistent with Section XV.

32. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act (RCRA), and any other applicable statutes or regulations.

#### **XV. ACCESS TO INFORMATION**

33. Settling Parties shall provide to EPA, upon written request, copies of all documents and information within their possession or control, or that of their contractors or agents, relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, correspondence, leases, or other documents or information relating to the Site.

#### **34. Confidential Business Information and Privileged Documents.**

a. Settling Parties may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Parties

that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), the public may be given access to such documents or information without further notice to Settling Parties.

b. Settling Parties may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege in lieu of providing documents or information, they shall provide EPA with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to EPA in redacted form to mask the privileged portion only. Settling Parties shall retain all documents or information that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor.

c. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XVI. RETENTION OF RECORDS**

35. Until five (5) years after the effective date of this Agreement, Settling Parties shall preserve and retain all documents or information now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

36. After the conclusion of the document retention period in the preceding paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such documents or information, and, upon written request by EPA received within 60 days of notice to EPA, Settling Parties shall deliver any such documents or information to EPA. Settling Parties may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion

of a document or information, the document or information shall be provided to EPA in redacted form to mask the privileged portion only. Settling Parties shall retain all documents or information that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor.

## **XVII. CERTIFICATION**

37. By signing this Agreement, Settling Parties certify that, to the best of their knowledge and belief, they have:

a. conducted a thorough, comprehensive, good faith search for documents or information, and have fully and accurately disclosed to EPA all documents or information currently in their possession, or in the possession of their officers, directors, employees, contractors, or agents, which relate in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed, or otherwise disposed of any documents or information relating to their potential liability regarding the Site after notification of potential liability regarding the Site;

c. fully complied with any and all EPA written requests for documents or information regarding the Site and Settling Parties' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and

d. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Parties execute this Agreement.

## **XVIII. NOTICES AND SUBMISSIONS**

38. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Parties.

As to EPA:

Karen Singer  
U.S. EPA, Region 4  
Environmental Accountability Division

61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Paula Batchelor  
U.S. EPA, Region 4  
CERCLA Program Services Branch  
Waste Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

As to Settling Parties:

Frank L. Hearne, Esquire  
Mechanik Nuccio Bentley Williams Hearne & Wester, P.A.  
219 Crystal Grove Boulevard  
Lutz, Florida 33548-6452

**XIX. INTEGRATION/APPENDICES**

39. This Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

Appendix A – Map of Site

Appendix B – Draft of Motion to Dismiss Appeal, Lee and Carolyn Oglesby v. U.S. Environmental Protection Agency (D.C. Cir.), Case Number 01-1091

Appendix C – List of Financial Documents Submitted to EPA by Settling Parties

**XX. PUBLIC COMMENT**

40. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Agreement if written comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

**XXI. EFFECTIVE DATE**

41. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 40 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

IT IS SO AGREED:

**Settling Parties:**

By: *Lee W. Oglesby Sr.* 8/9/02  
Lee W. Oglesby, Sr., as an individual Date

By: *Carolyn M. Oglesby* 8/9/02  
Carolyn M. Oglesby, as an individual Date

By: *Lee W. Oglesby Sr.* 8/9/02  
Lee W. Oglesby, Sr., as trustee for the  
Lee W. Oglesby, Sr. Living Trust, dated  
September 22, 1998, as amended Date

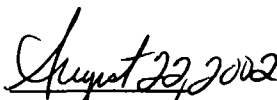
By: *Lee W. Oglesby Sr.* 8/9/02  
Lee W. Oglesby, Sr. as beneficiary for the  
Lee W. Oglesby, Sr. Living Trust, dated  
September 22, 1998, as amended Date

In the Matter of Alaric Area Ground Water Plume  
CERCLA Section 122(h) Agreement with Oglesby et al.

**U.S. Environmental Protection Agency:**

By: 

Acting Chief  
CERCLA Program Services Branch  
U.S. EPA, Region 4

  
Date

In the Matter of Alaric Area Ground Water Plume  
CERCLA Section 122(h) Agreement with Oglesby et al.

**U.S. Department of Justice:**

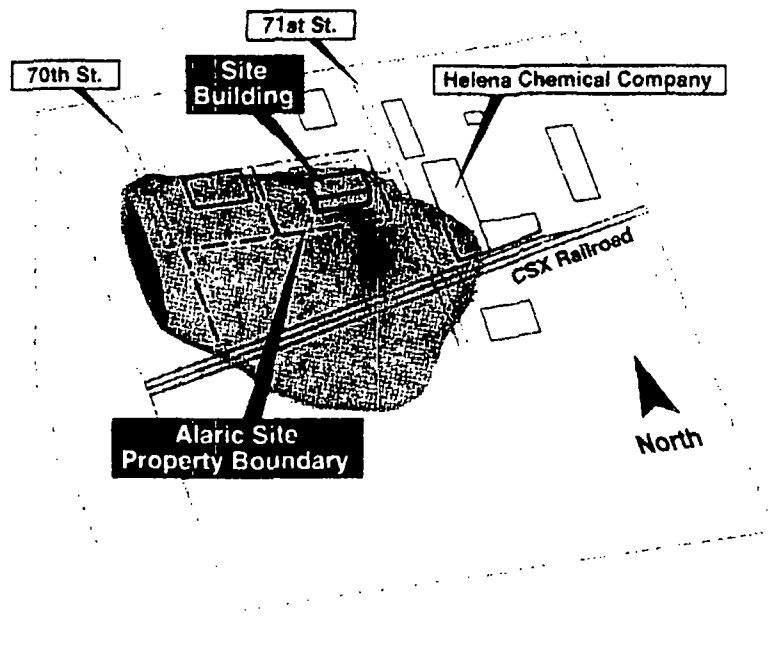
By: Tom Sansonetti  
Thomas L. Sansonetti  
Assistant Attorney General  
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Washington, D.C. 20530

10.17.02  
Date

By: Valerie K. Mann  
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Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

10/3/02  
Date





Not to Scale

**Appendix B – Draft of Motion to Dismiss Appeal, Lee and Carolyn Oglesby v. U.S. Environmental Protection Agency (D.C. Cir.), Case Number 01-1091**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

_____ )	
LEE and CAROLYN OGLESBY, )	
)	
Petitioners, )	
)	
v. )	No. 01-1091
)	
UNITED STATES ENVIRONMENTAL )	
PROTECTION AGENCY, )	
)	
Respondent. )	
_____ )	

**CONSENT MOTION TO DISMISS WITH PREJUDICE**

Pursuant to Rule 42, Fed. R. App. P., Petitioners Lee and Carolyn Oglesby, with the consent of Respondent United States Environmental Protection Agency, hereby move this Court, to dismiss the above-captioned case with prejudice. The parties agree that each shall bear its own costs.

Dated: \_\_\_\_\_, 2002

Respectfully Submitted,

\_\_\_\_\_  
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Attorneys for Petitioners

**Appendix C – Identification of Confidential Financial Information Submitted by Settling Parties**

1. 1994 U.S. Individual Income Tax Return for Lee W. and Carolyn Oglesby
2. 1995 U.S. Individual Income Tax Return for Lee W. and Carolyn Oglesby
3. 1996 U.S. Individual Income Tax Return for Lee W. and Carolyn Oglesby
4. 1997 U.S. Individual Income Tax Return for Lee W. and Carolyn Oglesby
5. 1998 U.S. Individual Income Tax Return for Lee W. and Carolyn Oglesby
6. 1999 U.S. Individual Income Tax for Lee W. and Carolyn Oglesby
7. Completed Confidential Individual Inability to Pay Claim Form for Lee W. and Carolyn Oglesby, January 1, 2000
8. Financial Statement for Lee W. and Carolyn Oglesby, January 1, 2000
9. Financial Statement for Lee W. and Carolyn Oglesby, January 1, 2001

**RESPONSIVENESS SUMMARY  
FOR CERCLA SECTION 122(h) - AGREEMENT**

**Alaric Area Ground Water Plume Site**

Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9622(i), requires the United States to publish in the Federal Register notice of proposed administrative settlements entered under Section 122(h) of CERCLA, 42 U.S.C. § 9622(h), and, for a 30-day period beginning on the date of publication, to provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement. Section 122(i) further requires the United States to consider any comments filed during the 30-day period and permits the United States to withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

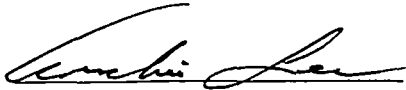
In accordance with Section 122(i) of CERCLA, the United States published notice of a proposed administrative settlement, EPA Docket No. CER-04-2002-3775, concerning the Alaric Area Ground Water Plume Site, located in Tampa, Hillsborough County, Florida, in the Federal Register on December 6, 2002 (67 Fed. Reg. 72683).

On January 3, 2003, attorney Kim Burke, of Taft, Stettinius, & Hollister LLP, submitted a comment on the proposed settlement on behalf of his client, Helena Chemical Company. Mr. Burke objected to the proposed administrative agreement, describing it as inappropriate, improper, and objectionable, because it provides contribution protection to the settling Oglesby parties who he asserted are responsible under CERCLA and other laws for hazardous substances, pollutants, and contaminants in groundwater being addressed by Helena Chemical Company pursuant to a Unilateral Administrative Order. Mr. Burke contends that Helena Chemical Company will incur costs in addressing hazardous substances released from Alaric, Inc. Superfund site for which it has no liability.

Section 122(h) of CERCLA, 42 U.S.C. § 9622(h), authorizes the United States to compromise and settle claims under CERCLA Section 107, 42 U.S.C. § 9607. Pursuant to this authority and the Attorney General's general settlement authority, the United States proposed entering into a settlement with the Oglesby parties, based on their demonstrated inability to reimburse the United States for all of the response costs it has incurred and will incur at the Alaric Area Ground Water Plume Site. Such "cashout" settlements are limited to situations when settling parties are not in a position to undertake performance of a response action either individually or collectively with other potentially responsible parties, but are able to make some cash payment to address past and future costs at the Site. Following a thorough review of the financial documentation provided by the settling parties, the United States has agreed to this proposed settlement and will be reimbursed to the extent the settling parties can afford such reimbursement without suffering undue financial hardship. In exchange for such payment, the Oglesby parties are entitled to contribution protection, pursuant to CERCLA Section 122(h)(4), 42 U.S.C. § 9622(h)(4), which provides that a person who has resolved its liability to the United States under the subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The matters addressed in the proposed settlement with the Oglesby parties are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Alaric Area Ground Water Plume Site, by the United States or any other person.

The comment the United States received on this proposed settlement did not disclose to the United States facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. Although

the comment does not result in a change in this settlement regarding the Alaric Area Ground Water Plume Site, Helena Chemical Company's concerns nevertheless may be a topic in ongoing discussions between the United States and Helena Chemical Company regarding the Helena Chemical Company Site in Tampa, Florida. The proposed settlement is, therefore, final and effective upon the date this Responsiveness Summary is signed. In accordance with Section VII (Reimbursement of Response Costs), Paragraph 13 of the Agreement, the first payment of \$33,333 is due within 60 days of the effective date of the Agreement, which is the date this Responsiveness Summary is signed. The two remaining payments shall be due as outlined in Section VII of the Agreement, Paragraph 13.



Archie Lee  
Chief, CERCLA Program Services Branch  
Waste Management Division  
U.S. EPA, Region 4

3/14/02

Date