

01-2001-0153  
NCD 981 751126

IN THE MATTER OF:	)	AGREEMENT
	)	
ABC One Hour Dry Cleaners Superfund Site	)	U.S. EPA Region 4
Jacksonville, Onslow County, North Carolina	)	CERCLA Docket No. 01-25-C
	)	
ABC One Hour Dry Cleaners, Inc.	)	PROCEEDING UNDER SECTION
Victor Melts and Martha Melts	)	
SETTLING PARTIES	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)

**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. This authority has been redelegated through the Director, Waste Management through the Associate Division Director for the Office of Superfund and Emergency Response to the Chief, Waste Programs Division. 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.

2. This Agreement is made and entered into by EPA and ABC One Hour Dry Cleaners, Inc. ("ABC"), Victor Melts and Martha Melts ("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 ABC One Hour Dry Cleaners Superfund Site ("Site") located in Jacksonville, North Carolina. 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. EPA conducted several investigations at the Site including a Remedial Investigation and Feasibility Study for both Operable Unit One and Two which confirmed the presence of volatile organic compounds (VOCs), including tetrachloroethylene (PCE), in both the soil and groundwater.

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 each Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is 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 VI without undue financial hardship.

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 liability. Settling Parties do not admit, and retains 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 are to avoid difficult and prolonged litigation by allowing Settling Parties to make a cash payment to resolve its 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 IX (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. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Fair Market Value" shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which ABC or the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, "Fair Market

Value" shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, "Fair Market Value" shall mean the balance of Settling Party's mortgage on the Property at the time of the transfer.

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

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. "Net Sales Proceeds" shall mean the total value of all consideration for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) less (i) the balance of Settling Party's mortgage on the Property, (ii) closing costs limited to those reasonably incurred and actually paid by Settling Party associated with the Transfer of the Property, and (iii) federal and state taxes owed on the proceeds. Settling Party shall provide EPA and the State with documentation sufficient to show the total value of all consideration for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items (i) through (iii) above. This documentation shall include, but not be limited to, the report of an appraisal paid for by Settling Parties, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties. The documentation must also include, either as part of the report or separately, (1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and (2) a schedule showing all outstanding indebtedness on the Property.

i. "Operable Unit One" or "OU1" shall mean the areal extent of all groundwater contaminated by volatile organic compounds associated with the Property at the Site.

j. "Operable Unit Two" or "OU2" shall mean the soil contaminated by volatile organic compounds at the Property of the Site.

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

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

m. "Property" shall mean that portion of the Site located at 2127 Camp Lejeune Boulevard, City of Jacksonville, Onslow County, North Carolina that has been owned by Settling Party Martha Melts since September 16, 1964.

n. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource Conservation and Recovery Act).

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

p. "Settling Parties" shall mean ABC One Hour Dry Cleaners, Inc. (hereafter, known as "ABC"), and Victor Melts and Martha Melts.

q. "Site" shall mean the ABC One Hour Dry Cleaners Superfund Site, encompassing approximately 1 acre, located at 2127 Camp Lejeune Boulevard, City of Jacksonville, Onslow County, North Carolina, and is "generally shown on the map included in Appendix A.

r. "Transfer" shall mean each sale, assignment, transfer or exchange by Settling Parties (or their heirs) of ABC, the Property or any portion thereof, or of the entity which owns the Property, where title to the Property or any portion or interest thereof (or the entity owning the Property) i) is transferred and Fair Market Value is received in consideration, or ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure.

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

## **VI. REIMBURSEMENT OF RESPONSE COSTS**

12. As detailed in Paragraphs 12(a), 13 and 14 below, Settling Parties shall pay to the EPA Hazardous Substance Superfund the combined principal sum of \$270,000, plus an additional sum for Interest. Notwithstanding the respective terms of each settling parties payment plan, each settling party is jointly and severally obligated to pay all the above-referenced principal amount plus the additional sum for Interest. For the purpose of settlement, each settling party shall make payment to the United States as directed below.

a. Settling party ABC shall pay to the EPA Hazardous Substance Superfund the principal sum of \$60,000, plus an additional sum for Interest as explained below. Payment shall be made in two separate installments on a yearly basis. 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 Effective Date of the Agreement. The first payment of \$30,000 shall be due within 30 days of the effective date of this Agreement as defined by Paragraph 42. The second payment of \$30,000 shall be due exactly one year from the due date of the initial payment of \$30,000. Settling party ABC may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly. Payment shall be made by Electronic Funds Transfer ("EFT") in accordance with instructions to be provided to settling party ABC by EPA Region 4, and shall be accompanied by a statement identifying the name and address of settling party, the Site name, the EPA Region and Site/Spill ID # 049E, and the EPA docket number for this action. The checks, or a letter accompanying the check, shall reference the name and address of Settling party, ABC, the Site name, the EPA Region and Site/Spill ID # 049E, and the EPA docket number for this action, and shall be sent to:

EPA Superfund  
Attention: Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia 30303

At the time of payment, settling party ABC shall send notice that such payment has been made to:

Paula Batchelor  
Cost Recovery Section  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

13. Settling party Victor Melts shall pay to the EPA Hazardous Substance Superfund the principal sum of \$60,000. A payment of \$30,000 shall be due within 30 days of the effective date of this Agreement as defined by Paragraph 42. A second payment of \$30,000 shall be due exactly one year from the due date of the initial payment of \$30,000. Payment shall be made by Electronic Funds Transfer ("EFT") in accordance with instructions to be provided to settling party by EPA Region 4, and shall be accompanied by a statement identifying the name and address of settling party, the Site name, the EPA Region and Site/Spill ID # 049E, and the EPA docket number for this action. The check, or a letter accompanying the check, shall reference the name and address of settling party, Victor Melts, the Site name, the EPA Region 4 and Site/Spill ID # 049E, and the EPA docket number for this action, and shall be sent to:

EPA Superfund  
Attention: Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia 30303

At the time of payment, settling party Victor Melts shall send notice that such payment has been made to:

Paula Batchelor  
Cost Recovery Section  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

14. Settling party Martha Melts shall pay to the EPA Hazardous Substance Superfund the principal sum of \$150,000. Payment shall be made in three separate 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 Effective Date of this Agreement. The first payment of \$50,000 shall be due within 30 days of the effective date of this Agreement as defined by Paragraph 42. The second payment of \$50,000 shall be due 180 days after the effective date of this Agreement. The final payment of \$50,000 shall be due exactly one year from the due date of the initial payment of \$50,000. Settling party Martha Melts may accelerate these payments, and interest due on the accelerated payments shall be reduced accordingly. Payment shall be made by Electronic Funds Transfer ("EFT") in accordance with instructions to be provided to Settling Parties by EPA Region 4, and shall be accompanied by a statement identifying the names and addresses of Settling Parties, the Site name, the EPA Region and Site/Spill ID # 049E, and the EPA docket number for this action. The check, or a letter accompanying the check, shall reference the name and address of Settling Party Martha Melts, the Site name, the EPA Region 4 and Site/Spill ID # 049E, and the EPA docket number for this action, and shall be sent to:

EPA Superfund  
Attention: Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia 30384

At the time of each payment, Settling Party Martha Melts shall send notice that such payment has been made to:

Paula Batchelor  
Cost Recovery Section  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

15. In the event that ABC is sold, dissolved or its assets are liquidated after all payments required under Paragraph 12, 13 and 14 have been made then Settling Parties will not be required to pay any of the gross sales proceeds to EPA. However, if ABC is sold, dissolved or its assets are liquidated before ABC, Victor Melts and Martha Melts have made their initial payments pursuant to Paragraphs 12, 13 and 14 of the Agreement (\$30,000, \$60,000 and \$50,000, respectively) then ABC, Victor Melts and Martha Melts shall be jointly and severally obligated to pay EPA \$270,000 or 50% of the gross sales proceeds derived from the sale of ABC or the liquidation of any of ABC's assets (whichever is greater). In the event that ABC is sold, dissolved or its assets are liquidated after ABC, Victor Melts and Milton and Martha Melts have made their initial payments pursuant to Paragraph 12, 13 and 14 (\$30,000, \$60,000 and \$50,000, respectively), but prior to ABC and Martha Melts making their second and final payments (\$30,000 and 100,000, respectively) then ABC and Martha Melts shall be jointly and severally obligated to pay EPA \$130,000 or 50% of the gross sales proceeds derived from the sale of ABC or the liquidation of any of ABC's assets (whichever is greater). Full payment shall be made within 30 days of the effective date of such Transfer in accordance with the process described in Paragraphs 12, 13 and 14 above. At least 30 days prior to

any such Transfer, Settling Parties shall notify EPA of the proposed Transfer, which notice shall include a description of the property or assets to be sold, the identity of the purchaser, the terms of the transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of ABC or the assets based upon an appraisal obtained within one year of the Transfer. Settling Parties shall notify EPA of the completion of the Transfer within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA.

16. Martha Melts agree that they will not sell, assign, transfer or exchange the Property except by means of a Transfer as defined by this Agreement. In the event that Martha Melts Transfers the Property at any time prior to three years after the effective date of this Agreement then they will be jointly and severally obligated to pay EPA 75% of the Net Proceeds from the Transfer of Property. This payment will not relieve Settling Parties of their payment obligations under paragraphs 12(a), 13 and 14; rather, the payment will be in addition to the payment required of Martha Melts under paragraph 14. Payment shall be made within 30 days of the effective date of the Transfer of the Property in accordance with the process described in Paragraph 14 above. At least 30 days prior to any such Transfer, Martha Melts shall notify EPA of the proposed Transfer, which notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the Transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the Property based upon an appraisal obtained within 1 year of the Transfer. Martha Melts shall notify EPA of the completion of the Transfer within 10 days of date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA. In the event of a Transfer of the Property or any portion thereof, Martha Melts shall continue to be bound by all the terms and conditions, and subject to all the benefits, of the Agreement, except if EPA and Settling Parties modify this Agreement in writing. Nothing in this paragraph obligates Settling Parties to transfer the Property or any portion thereof.

17. In the event that Settling Parties receive payment on a claim related to the Site for insurance coverage or contractual indemnification for response costs in connection with this Site, the Settling Parties shall remit 50% of the proceeds obtained to EPA. This Payment shall be in addition to the payments required under Paragraphs 12(a), 13 and 14 above. Payment shall be made within 30 days of the date Settling Parties receive said proceeds in accordance with the process described in Paragraphs 12(a), 13 and 14 above.

18. The terms and obligations under this Agreement will not terminate upon the death of any of the Settling Parties.

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

19. If Settling Parties fail to make any payment under Paragraphs 12, 13, 14, 15 or 16 by the required due date, all remaining 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.

20. If any amounts due under Paragraphs 12, 13, 14, 15 or 16 are not paid by the required date, Settling Parties shall be in violation of this Agreement and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 18, \$200.00 per violation per day that such payment is late. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments 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 Party, the Site name, the EPA Region and Site/Spill ID #04 RO, and the EPA docket number for this action, and shall be sent to:

EPA Superfund  
Attention: Superfund Accounting  
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  
Cost Recovery Section  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

21. 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 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.

22. 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 refuses to comply with any term or condition of this Agreement, it 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 Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

23. 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 12, 13, 14, 15 and 16, or from performance of any other requirements of this Agreement.

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

24. Except as specifically provided herein in Section IX (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 payments required for each of the Settling Parties under Section VI, Paragraphs 12, 13, and 14 (Reimbursement of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of its obligations under this Agreement, including but not limited to, payment of all amounts due under Section VI (Reimbursement of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). 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.

a. Notwithstanding any other provision in this Agreement, the United States reserves, and this Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Parties to reimburse the United States for additional costs of response if, prior to completion of remedial action or publication of this Agreement: (i) conditions at the site previously unknown to EPA, are discovered, or (ii) information previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information

indicates that the remedial action currently contemplated by the Records of Decision ("ROD") for OU1 and OU2 are not sufficiently protective of human health or the environment. For the purposes of this Paragraph, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision

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

25. 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 24. Notwithstanding any other provision of this Agreement, EPA specifically reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party 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. liability, based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Parties; and
- 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.

26. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to re-institute 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 38(d), is false or, in an material respect, inaccurate.

27. 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.

#### **X. COVENANT NOT TO SUE BY SETTLING PARTY**

28. 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 response activities at the Site; 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.

29. 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).

30. 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, except as provided in Paragraph 17.

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

31. Except as provided in Paragraph 30, 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. 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.

32. The Parties agree that Settling Parties 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.

33. 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 24.

#### **XII. SITE ACCESS**

34. 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 XIV (Access to Information).
- g. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

35. Settling Parties shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of the Agreement, including but not limited to, sampling analysis, receipts, correspondence, or other documents or information related to the Site

### **XIII. RETENTION OF RECORDS**

36. Until 6 years after the effective date of this Agreement, Settling Parties shall preserve and retain all documents or information now in its possession or control, or which come into its 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.

37. 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 request by 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, it 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 it claims 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.

### **XIV. CERTIFICATION**

38. By signing this Agreement, Settling Parties certify that, to the best of their knowledge and belief, and 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 relates 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 its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site;

c. fully complied with any and all EPA 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 , 42 U.S.C. § 6927; and

d. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its 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.

**XV. NOTICES AND SUBMISSIONS**

39. 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 Party 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:**

Paula Batchelor  
Cost Recovery Section  
61 Forsyth Street, SW  
Atlanta, Georgia 30365

**As to Settling Parties:**

Terry Richard Kane, Esq.  
Poyner & Spruill L.L.P.  
P.O. Box 10096  
Raleigh, North Carolina 27605-0096

**XVI. INTEGRATION/APPENDICES**

40. 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 is a list of the financial documents submitted to EPA by Settling Parties.

**XVII. PUBLIC COMMENT**

41. 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 comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

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**XVIII. EFFECTIVE DATE**

42. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 41 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:

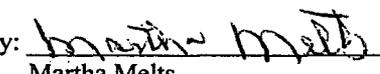
Settling Parties

By:   
Vice President of ABC

17 July 2000  
Date

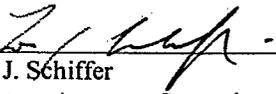
By:   
Victor Melts

17 July 2000  
Date

By:   
Martha Melts

17 July 2000  
Date

IN THE MATTER OF ABC One Hour Dry Cleaners Superfund Site  
Signature page



Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

12/9/00  
Date

U.S. Environmental Protection Agency

By:   
Name: Richard D. Green, Director  
Waste Management Division

31 AUG 00  
Date