

4/12/88

RI-FS

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#27016

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:	)	Proceeding Under Section 104, Section
	)	106(a), and Section 122(d)(3) of the
HOWE VALLEY LANDFILL SITE	)	Comprehensive Environmental Response,
Hardin County, Kentucky.	)	Compensation, and Liability Act of
	)	1980, as amended, 42 U.S.C. §9604,
	)	§9606(a), and §9622(d)(3).
DOW CORNING CORPORATION	)	
Midland, Michigan 48686-0994	)	EPA DOCKET NO.: <u>88-13-C</u>
and	)	
EAGLE-PICHER INDUSTRIES, INC.	)	
Cincinnati, Ohio 45201,	)	
	)	
Respondents.	)	

ADMINISTRATIVE ORDER BY CONSENT

I. JURISDICTION

This Administrative Order by Consent (hereafter called "Consent Order") is entered into by the United States Environmental Protection Agency (hereafter called "EPA") with Dow Corning Corporation and Eagle-Picher Industries, Inc. (hereafter called "Respondents"), pursuant to the authority vested in the President of the United States by Section 104, Section 106(a), and Section 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereafter called "CERCLA"), 42 U.S.C. §9604, §9606(a), and §9622(d)(3), as amended by the Superfund Amendments and Reauthorization Act of 1986 (hereafter called "SARA"), P.L. 99-499. (CERCLA, as amended, may sometimes be hereafter referred to simply as "CERCLA"). SARA portions of the above-cited sections were delegated by the President to the Administrator of EPA by Executive Order 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (Jan. 29, 1987), and were redelegated by interim delegations of the Administrator of EPA to Regional Administrators and Assistant Administrators in EPA Delegation Nos. 14-8-B and 14-14-C, dated February 26, 1987. These interim delegations authorize Regional Administrators to enter into administrative orders by consent to perform Remedial Investigations and Feasibility Studies (hereafter called "RI/FS").

APR 12 1988

Respondents consent to and will not contest EPA jurisdiction regarding this Consent Order.

The Respondents do not admit, accept, or intend to acknowledge any liability or fault by any party hereto with respect to any matter arising out of or relating to the Site. In signing this Order, the Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to enforce this Order, the validity of any factual or legal determinations made herein by EPA. Except as expressly provided in this Order, all Signatories expressly reserve all rights and defenses that they may have.

## II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondents, are: (A) with respect to the Remedial Investigation, to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants from the Howe Valley Landfill (hereafter called "the Site"); and (B) with respect to the Feasibility Study, to evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the Site; and (C) to remove and characterize hazardous substances, pollutants, contaminants and other substances from the Site, if such removal is appropriate and consistent with the other purposes of this Order.

The activities conducted pursuant to this Consent Order will be consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and will be subject to the express EPA approvals as set forth below.

## III. EPA'S FINDINGS OF FACT

For the purposes of this Consent Order, EPA finds that:

- A. The Site consists of 10 acres located in Hardin County, Kentucky, approximately four (4) miles southwest of Howe Valley, the nominal community. Kentucky Industrial Services, Inc. and Kentucky Industrial Haulers, Inc. conducted industrial waste disposal operations at the Site beginning in 1967. Approximately 2000 to 4000 drums of wastes were buried or disposed of on the surface of the ground. Types of wastes disposed of included, but may not have been limited to, sludges from manufacturing, plating sludges, galvanizing wastes, insulation, and insulation by-products.

- B. Presently, the Site is inactive, with access limited but not restricted. Several partially exposed drums can be observed at the Site. Numerous small, circular depressions in the ground surface are apparent where the shallow-buried drums have rusted through.
- C. The Site is underlain by the Paoli and Ste. Genevieve Limestones that are susceptible to solutional development and resultant Karst topography. This is illustrated by the numerous sinking streams, sinkholes, and relative absence of surface drainage north and northeast of the Site. The Site itself is located just south of a sinkhole plain that has developed in the Paoli and Ste. Genevieve Limestones.
- D. The Respondents are: Dow Corning Corporation and Eagle-Picher Industries, Inc. Other Respondents may be added as parties to the Consent Order at later dates.
- E. Respondents Dow Corning Corporation and Eagle-Picher Industries, Inc. each owned or possessed one or more of the following hazardous substances and arranged for its disposal or transport for disposal at the Site: chromium, nickel, zinc, cadmium, iron, arsenic and 1,1,1-trichloroethane.
- F. The Site has been included on the Superfund National Priorities List (NPL) in accordance with Section 105(a)(8)(B) of CERCLA, 42 U.S.C. §9605(a)(8)(B). This Site was proposed on June 10, 1986, 51 Federal Register 21106 (1986), and was finalized on the NPL on July 22, 1987, 52 Federal Register 27623 (1987).
- G. Hazardous substances which are known to be present at the Site include, but are not limited to, cadmium, chromium, nickel, lead, zinc, 1,1-dichloroethane, 1,1,1-trichloroethane, di-n-butylphthalate, bis (2-ethylhexyl) phthalate, and tetrahydroethane.
- H. The effects of the above mentioned hazardous materials vary depending upon level and duration of contact. Depending upon level and duration, exposure may cause illness, disease, or other harmful effects to plants, animals, and humans.

#### IV. EPA'S CONCLUSIONS OF LAW

Based on the Findings of Fact set out herein, EPA concludes that:

- A. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
- B. Respondents are "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
- C. Respondents are responsible parties under Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3).
- D. Substances described in Section III, paragraph G above are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- E. Hazardous substances, as defined in Section 101(14) of CERCLA, have entered the environment at the Site through spills, leaks, and intentional discharges, and are currently present there.
- F. The past, present or potential migration of hazardous substances from the Site constitutes an actual or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

#### V. EPA'S DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

- A. The actions required by this Consent Order are necessary to protect the public health, welfare, and the environment; and
- B. Respondents will properly and promptly conduct the RI/FS and are qualified to do so, in accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a)(1), as amended by SARA.

#### VI. WORK TO BE PERFORMED

All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer with expertise in hazardous waste site cleanup and hydrogeological investigations as they are related to Karst topography areas. Prior to the initiation of site work, Respondents will notify EPA in writing regarding the name, title, and qualifications of such engineer and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work will be performed:

- A. Within 45 calendar days of the effective date of this Consent Order, Respondents will submit to EPA a plan for a complete Remedial Investigation and Feasibility Study (RI/FS Work Plan). This plan will be developed in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents entitled Guidance on Remedial Investigation and Feasibility Studies Under CERCLA; it shall also be developed in accordance with the NCP and the Superfund Public Health Evaluation Manual, and it shall consider and include the requirements of Section 121 of SARA. These documents have been or will be provided to Respondents by EPA within 14 calendar days of the effective date of this Consent Order. The RI/FS Work Plan contemplated by this Consent Order will detail those elements included in the RI/FS Work Plan Outline attached hereto as Attachment 1. As described in the RI/FS guidance, the RI/FS Work Plan must also include: (1) a sampling plan, (2) a health and safety plan, (3) a description of chain of custody procedures, (4) a description of quality control and quality assurance procedures, and (5) a site management plan. The RI/FS Work Plan will be subject to review, modification, and approval by EPA.
- B. After receipt of the RI/FS Work Plan by EPA, EPA will notify Respondents in writing of EPA's approval or disapproval of the RI/FS Work Plan or any part thereof. In the event of any disapproval, EPA will specify in writing both the deficiencies and any EPA recommended modifications regarding the RI/FS Work Plan.
- C. Within 15 calendar days of the receipt of EPA notification of RI/FS Work Plan disapproval, Respondents will amend and submit to EPA a revised RI/FS Work Plan. In the event of subsequent disapproval of the RI/FS Work Plan, EPA retains the right to conduct a complete RI/FS pursuant to its authority under CERCLA, as amended.
- D. Respondents will implement the RI/FS Work Plan approved by EPA. The EPA approved RI/FS Work Plan and any EPA approved amendments thereto will be attached to and incorporated in this Consent Order as Attachment 2. This RI/FS work will be conducted in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents, and with the standards, specifications, and schedule contained in the RI/FS Work Plan.
- E. Within 7 calendar days of the approval of the RI/FS Work Plan by EPA, Respondents will commence work on Task 1 of the RI/FS Work Plan.

- F. Respondents will provide monthly written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. At a minimum, these progress reports will: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results of sampling and tests and all other data received by Respondents, and (3) include all plans and procedures which are completed subsequent to EPA approval of the RI/FS work Plan and which come in during the month preceeding the report, as well as such actions, data, and plans which are scheduled for the next month. These reports are to be submitted to EPA by no later than the tenth day of each month following the commencement of work by Respondents under the RI/FS Work Plan.
- G. Respondents will provide preliminary and final reports to EPA according to the schedule contained in the RI/FS Work Plan.
- H. EPA will review the preliminary and final reports and within 60 calendar days of receipt by EPA of such reports, EPA will notify Respondents in writing of EPA's approval or disapproval of these reports, or any part thereof. In the event of any disapproval, EPA will specify in writing both the deficiencies and the reasons for such disapproval.
- I. Within 30 calendar days of receipt of EPA notification of preliminary or final report disapproval, Respondents will amend and submit to EPA revised reports. In the event of disapproval, EPA retains the right to request the amendment of such reports, to perform additional studies, and to conduct a complete Remedial Investigation and Feasibility Study pursuant to its authority under CERCLA, and to take other action, including but not limited to enforcement action to recover its costs pursuant to its authority under CERCLA.
- J. Documents, including reports, approvals, disapprovals, and other correspondence, to be submitted pursuant to this Consent Order, will be sent by certified mail to the following addresses, or to such other addresses as Respondents or EPA hereafter may designate in writing:
  - 1. Documents or correspondence to EPA should be sent in triplicate to:

Ms. Elaine Houston  
Remedial Project Manager  
Superfund Branch  
US EPA-Region IV  
345 Courtland St. N.E.  
Atlanta, GA 30365
  - 2. Documents or correspondence to Respondent Dow Corning Corporation should be sent to:

Mr. John C. Rothhaar, Esquire  
Senior Attorney  
Dow Corning Corporation  
Midland, Michigan 48686-0994

3. Documents or correspondence to Respondent Eagle-Picher Industries, Inc. should be sent to:

Mr. Mark S. Boyle, Esquire  
Attorney  
Eagle-Picher Industries, Inc.  
580 Walnut Street  
P.O. Box 779  
Cincinnati, Ohio 45201

- K. It is contemplated by EPA and Respondents that the initial focus of the Remedial Investigation will be the Removal of waste and its characterization, as well as site investigation. Following these actions, it may be necessary for EPA and Respondent to reconsider tasks remaining to be performed under the Work Plan, in view of the information obtained. It is specifically contemplated that such reconsideration may involve the elimination, modification or addition of tasks. When either EPA or a Respondent determines that reconsideration is warranted, it shall so notify the other parties in writing, specifying the changes proposed to be made in the Work Plan. Within twenty-one (21) calendar days of receipt of written notification of proposed changes, the receiving parties will notify the party requesting changes of acceptance of or objection to the proposed changes. In the event of objection, the objecting party will specify in writing both the nature of its objections and any requested modifications of the proposal. The submission of written objections will serve to invoke the dispute resolution provisions of Section XII.

#### VII. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA and the Respondents acting jointly will each designate a Project Coordinator. Each Project Coordinator will be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, communications between Respondents and EPA and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, will be directed through the Project Coordinators.

EPA and Respondents each have the right to change their respective Project Coordinator. Such a change will be accomplished by notifying the other parties in writing at least 5 calendar days prior to the change.

The EPA designated "On-Scene-Coordinator", who may be the EPA Project Coordinator, will have the authority vested in the On-Scene-Coordinator by the National Contingency Plan, 40 C.F.R. Part 300, as amended. This includes the authority to halt, conduct, or direct any tasks required by this Consent Order, or any response actions or portions thereof, when conditions present an immediate risk to public health or welfare or the environment.

The absence of the EPA Project Coordinator from the Site will not be cause for the stoppage of work.

#### VIII. QUALITY ASSURANCE

Respondents will use quality assurance, quality control, and chain of custody procedures in accordance with EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, April 1, 1986) throughout all sample collection and analysis activities. This manual will be provided to Respondents by EPA within 14 calendar days of the effective date of this Consent Order, if it has not previously been made available. Respondent will consult with EPA in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, Respondents will:

- A. Ensure that EPA personnel or EPA authorized representatives are allowed access to the laboratory(ies) and personnel utilized by Respondents for analyses.
- B. Ensure that the laboratory(ies) utilized by Respondents for analysis performs such analyses according to EPA methods or methods deemed satisfactory to EPA and, in the event such methods deviate from those published in the EPA Methods Manual SW-846 submit all protocols to be used for analyses to EPA at least 14 calendar days prior to the commencement of analysis.
- C. Ensure that the laboratory(ies) utilized by Respondents for analyses participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. As part of such a program, and upon request by EPA, such laboratory will perform analysis of samples provided by EPA to demonstrate the quality of each laboratory's analytical data.



### IX. SITE ACCESS

To the extent that the Site is presently owned by parties other than those bound by this Consent Order, Respondents have obtained or will use their best efforts to obtain site access agreements from the present owners within 30 calendar days of the effective date of this Consent Order. Such agreements shall provide reasonable access to EPA or its authorized representatives. In the event that site access agreements are not obtained within the time referenced above, Respondents shall notify EPA regarding both the lack of, and efforts to obtain, such agreements within 31 calendar days of the effective date of this Consent Order.

### X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

Respondents will make the results of all sampling or tests or other data generated by Respondents, or on Respondents' behalf, with respect to the implementation of this Consent Order, available to EPA and will submit these results in monthly progress reports as described in Section VI of this Consent Order.

EPA will make available to Respondents the results of sampling or tests or other data similarly generated by EPA. To the extent that any delay by Respondents in submission of reports or completion of tasks under this Order is attributable to the failure of EPA to make the results of sampling or other data available to Respondents, such a failure by EPA will constitute a force majeure event, subject to the provisions of Section XXI.

At the request of EPA, Respondents will allow split or duplicate samples to be taken by EPA or its authorized representatives of any samples collected by Respondents pursuant to the implementation of this Consent Order. Respondents will notify EPA not less than 8 calendar days in advance of any sample collection activity.

At the request of Respondents, EPA will similarly allow split or duplicate samples to be taken by Respondents, and EPA will provide reasonable notification to Respondents in advance of any sample collection activity.

EPA or any EPA authorized representative will have authority which includes, but is not limited to: authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operating logs, and contracts related to the Site; authority to review

the progress of Respondents in carrying out the terms of this Consent Order; authority to conduct such tests as EPA or the EPA Project Coordinator deem necessary; authority to use a camera, sound recording, or other documentary type equipment; and authority to verify the data submitted to EPA by Respondents. Respondents will permit such person(s) to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph will comply with all approved health and safety plans.

Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. §2.203(b). Such an assertion will be adequately substantiated when the assertion is made. Analytical data will not be claimed as confidential by Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondents.

#### XI. RECORD PRESERVATION

EPA and Respondents agree that each will preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. Upon request by EPA, Respondents will make available to EPA such records or copies of any such records. Additionally, if EPA requests that some or all documents be preserved for a longer period of time, Respondents will comply with that request.

#### XII. DISPUTE RESOLUTION

If Respondents object to any EPA notice of disapproval or decision made pursuant to this Consent Order, Respondents will notify EPA in writing of their objections within fourteen (14) days of receipt of the decision. EPA and Respondents then have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach an agreement. If agreement cannot be reached on any issue within this fourteen (14) calendar day period, EPA will provide a written statement of its decision to Respondents.

XIII. OVERSIGHT

In accordance with Section 104(a)(1) of CERCLA, as amended, 42 U.S.C. §9604(a)(1), Respondents agree to reimburse the Hazardous Substance Superfund for all costs incurred by EPA or its authorized representatives in oversight of Respondents' actions under the Consent Order.

EPA agrees to provide copies of all final instructions directed by EPA to any contractor involved in the oversight function at the Site on behalf of EPA, with such copies to be distributed concurrently.

XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

Except for delays from events which constitute a force majeure, for each week that Respondents fail to submit a report or document or otherwise fail to achieve the requirements of this Consent Order, and upon demand from EPA, Respondents shall pay into the United States Treasury the sums set forth below as stipulated penalties. Checks should specifically reference the Site and should be sent to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA. 15251  
ATTENTION: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Stipulated penalties will accrue in the amount of \$1,000.00 for the first week (or any part thereof) of delay and \$2,000.00 for each week (or any part thereof) of further delay in submission of a report or document or achievement of the requirements of this Consent Order.

The Work Plan shall include completion dates for certain key milestone tasks. ~~Such key tasks shall, at a minimum, include the draft RI Report, the final RI Report, the draft FS Report and the final FS Report. If Respondents meet the completion date for any such key milestone task, they shall not be liable for stipulated penalties associated with tasks scheduled to be performed between the completion date for the key task and that of the immediately preceding scheduled key task, if any.~~

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of Respondents' failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions include a suit for statutory penalties as authorized by Section 106 of CERCLA, a federally-funded response

XV. COVENANT NOT TO SUE

EPA covenants not to sue the Respondents for response costs incurred by EPA with respect to this Site prior to the effective date of this Order.

XVI. RESERVATION OF RIGHTS

Except as provided in Section XV, EPA reserves the right to take any enforcement action pursuant to CERCLA or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

Except as provided in Section XV, EPA expressly reserves all rights and defenses that it may have, including EPA's right both to disapprove of work performed by Respondents and to request that Respondent perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that Respondents decline to perform any additional or modified tasks, EPA will have the right to undertake any Remedial Investigation or Feasibility Study work. In addition, EPA reserves the right to undertake removal actions or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from Respondents thereafter for such costs which are incurred by the United States or the Commonwealth of Kentucky.

XVII. REIMBURSEMENT OF COSTS

At the end of each fiscal year, EPA will submit to Respondents an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order, excluding those past response costs with respect to which EPA has covenanted not to sue under Section XV. Respondents will, within 30 calendar days of receipt of that accounting, remit a check for the amount of those costs made payable to the Hazardous Substance Superfund. Checks should specifically reference the identity of the Site and should be sent to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA. 15251  
ATTENTION: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to the Project Coordinator.

EPA reserves the right to bring an action against the Respondents pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States or the Commonwealth of Kentucky related to this Consent Order and not reimbursed by Respondents, as well as any other past and future costs incurred by the United States or the Commonwealth of Kentucky in connection with response activities conducted pursuant to CERCLA at this site, except as provided in Section XV.

#### XVIII. OTHER CLAIMS

Except as provided in Section XV, nothing in this Consent Order will constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

In entering into this Consent Order, Respondents waive any right to seek reimbursement under Section 106(b)(2) (A)-(C) of CERCLA, 42 U.S.C. §9606(b)(2) (A)-(C), for any past costs associated with this Site, or any costs incurred in complying with this Order.

#### XIX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order will be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided in this Consent Order, or made a part of this Consent Order by being incorporated herein at some later date.

#### XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. EPA is not a party in any contract involving Respondents at or relating to the Site.

XXI. FORCE MAJEURE

Any event beyond Respondents' reasonable control, which Respondents could not have overcome by due diligence, which causes delay in the achievement of the requirements of this Consent Order will be a force majeure event, and EPA will extend the time for performance hereunder by a period equal to the delay resulting from such circumstance. Respondents will have the burden of proving that the delay was caused by circumstances beyond the reasonable control of Respondents which could not have been overcome by due diligence. Respondents will promptly notify EPA's Project Coordinator orally and will, within fifteen (15) calendar days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which Respondents intend to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondents, the time for performance hereunder will be extended for a period equal to the delay resulting from such circumstance. Respondents will adopt all reasonable measures to avoid or minimize delay. Failure of Respondents to comply with the notice requirements of this paragraph void and constitute a waiver of Respondents' right to request a waiver of any of the requirements of this Consent Order. Increased costs of performance of the terms of this Consent Order or changed economic circumstances will not be considered circumstances beyond the control of Respondents.

In the event that EPA and Respondents cannot agree that any delay in the achievement of the requirements of this Consent Order, including the failure to submit any report or document, has been or will be caused by a force majeure event, the dispute will be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XII) of this Consent Order.

XXII. PUBLIC COMMENT

~~Upon submittal to EPA of an approved Feasibility Study Final Report, EPA will make both the Remedial Investigation Final Report and the Feasibility Study Final Report available to the public for review and comment for, at a minimum, a thirty (30) day period, pursuant to EPA's Community Relations Policy. Following the public review and comment period, EPA will notify Respondents which remedial action alternative is approved for the site.~~

XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between Respondents and EPA prior to the issuance of this Consent Order concerning its terms, Respondents agree that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order will be the date on which it is signed by EPA. This Consent Order may be amended by mutual agreement of EPA and Respondents. Such amendments will be in writing and will have, as the effective date, that date on which such amendments are signed by EPA.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, and attachments will be considered a failure to achieve the requirements of this Consent Order and will subject the Respondents to the provisions included in the "Delay in Performance/Stipulated Penalties" Section (Section XIV) of this Consent Order.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval of EPA as may be required by this Consent Order.

XXIV. PARTIES BOUND

This Consent Order will apply to and be binding upon Respondents and EPA, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for Respondents or EPA, or both.

No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of Respondents or in any way alter Respondents' responsibility under this Consent Order. Respondents will remain the Respondents under this Consent Order and will be responsible for carrying out all activities required of the Respondents under this Consent Order. Respondents will provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Consent Order within 14 calendar days of the effective date of this Consent Order or date of such retention, whichever is later.

XXV. NOTICE TO THE STATE

EPA has notified the Commonwealth of Kentucky pursuant to the requirements of Section 106(a) of CERCLA.

XXVI. TERMINATION

The provisions of this Consent Order will be deemed fulfilled upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order have been completed.

IT IS SO AGREED:

BY: James J. Collins Vice President Secretary 4/11/88  
[For Dow Corning Corporation] Title Date  
of General Counsel

BY: Mark S. Boyle, ATTORNEY APRIL 12, 1988  
[For Eagle-Picher Industries, Inc.] Title Date

IT IS SO AGREED AND ORDERED:

BY: Patrick M. Titm On behalf of EPA April 15, 1988  
U.S. Environmental Protection Agency Date