

In the matter of:

Hercules, Incorporated	:	
Resin Disposal Site	:	Solid Waste
Jefferson Borough, Allegheny County	:	Disposal

CONSENT ORDER AND AGREEMENT

The Commonwealth of Pennsylvania, Department of Environmental Resources ("Department") has determined the following facts:

A. The Department is the agency with the power and authority to enforce the provisions of the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, 35 P.S. Section 6018.601 et seq. ("SWMA"), The Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. Section 691.1 et seq. ("Clean Streams Law"), Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. Section 510-17 ("Administrative Code"), and the rules and regulations promulgated under said statutes.

B. Hercules is a Delaware corporation with its corporate headquarters located at Hercules Plaza, Wilmington, Delaware 19894.

C. Hercules conducts business at State Highway 837, West Elizabeth, Pennsylvania 15088, which business is the location of a hydrocarbon resins manufacturing operation formerly owned by the Pennsylvania Industrial Chemical Corporation ("PICCO"), also known as the PICCO-Jefferson plant.

D. Hercules owns and maintains the Resin Disposal site ("site"), an area of approximately 25.5 acres located at the northwest end of Stilley Avenue in Jefferson Borough, Allegheny County, Pennsylvania (see Appendix A).

E. Between approximately 1950 and 1973, PICCO owned the site property, disposing of, on approximately 3.5 acres within the site, approximately 77,000 tons of wastes at the site from 1950 through 1964. (See Appendix B). Wastes disposed at the site included at least clay poly cakes, dechlor cakes, emulsion waste, sludge from acid wash and spent caustic from acid wash operations, generated during the manufacture of hydrocarbon resins at the former PICCO Clairton plant.

F. The wastes described in Paragraph E, above, contained, among other constituents, benzene, toluene, and naphthalene, which are hazardous substances as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9606(a), portions of which were modified by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), signed by the President of the United States on October 17, 1986.

G. In May, 1973 Hercules purchased the site property and other assets of PICCO, including the PICCO-Jefferson and Clairton plants. PICCO is not an extant corporation.

H. The site is listed on the National Priorities List in accordance with Section 105(B) of CERCLA at 48 Fed. Reg. 40658 (September 8, 1983; 40 C.F.R. Part 300, Appendix C).

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I. The site is located in the Allegheny Plateau physiographic province within the watershed of the Monongahela River. The bedrock underlying the site is of sedimentary origin, consisting of interbedded sandstones, shales, limestones and coal. The bedrock is believed to dip toward the south and southwest in the vicinity of the site.

J. An unnamed tributary ("unnamed stream") to the Monongahela River originates within and flows through the site, and intercepts at least some of the shallow groundwater flowing from beneath the site. The Monongahela River is located approximately 0.6 miles downstream of the site, and is used as a water supply and for recreational purposes downstream of the site.

K. There are at least two known water-bearing zones beneath the site, occurring (from the surface down): (1) in the unconsolidated soils; and (2) in the Pittsburgh Coal. A water-bearing zone or zones may exist in the bedrock underlying the Pittsburgh Coal.

L. The wastes described in Paragraph E, above, were disposed behind two earthen dikes and later covered with soil within the confines of a valley in which strip-mining of coal from the Pittsburgh Coal bed had previously occurred.

M. Groundwater sampled in the unconsolidated soils and Pittsburgh Coal downgradient of the waste disposal area contained benzene, toluene, and naphthalene.

N. Unconsolidated soils downgradient of the waste disposal area visually appear to be contaminated with constituents of waste disposed at the site.

O. Intermittent air monitoring at the site, conducted by the Department as recently as September 1987, indicated that measurable organic constituents from disposed wastes are degrading air quality.

P. Access to the site is only partially restricted so that people and animals may enter the site and come into contact with potentially contaminated soils and surface water, or inhale potentially contaminated air.

Q. In 1973 Hercules constructed a leachate collection system to collect contaminated groundwater in the unconsolidated soils downslope of the waste disposal area. This system was only partially effective in stopping the leachate discharge. Beginning in 1980, Hercules proceeded with an investigation of the groundwater and soil conditions at the landfill site. The investigation included the installation of groundwater and bedrock monitoring wells. As a result of the investigation, Hercules recommended the installation of an interception trench and leachate collection system at the toe of the landfill. This system was installed, following approval by the Department, during the summer of 1983. The aqueous fraction of the treated leachate from the wastewater treatment unit is being discharged to the West Elizabeth Sanitary Authority. The floating fraction of the leachate is collected and removed from the site for

burning at the Hercules State Highway 837 plant's industrial boilers.

R. Neither Hercules, PICCO nor any other person ever applied for or received a permit authorizing the disposal of solid waste at the site pursuant to the Solid Waste Management Act, Act of June 30, 1968, P.L. 788, as amended, 35 P.S. Section 6001 et seq. (repealed July 7, 1980), or its successor the Solid Waste Management Act, the Act of July 7, 1980, P.L. 380, 35 P.S. Section 6018.101 et seq. ("SWMA").

S. Neither Hercules, PICCO nor any other person has applied for or received for the site a permit authorizing the discharge of industrial waste to waters of the Commonwealth pursuant to Sections 301 and 307 of the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. Sections 691.301 and 691.307 ("Clean Streams Law").

T. The disposal of solid waste without authorization by permit constitutes a violation of Sections 501 and 610 of the SWMA, 35 P.S. Sections 6018.501 and 6018.610, unlawful conduct and a statutory public nuisance.

U. The discharge of leachate to groundwater without authorization by permit constitutes a violation of Sections 501 and 610 of the SWMA, 35 P.S. Sections 6018.501 and 6018.610, and of Sections 301, 307, 401, 402, and 611 of the Clean Streams Law, 35 P.S. Sections 691.301, 691.307, 691.401, 691.402, and 691.611, unlawful conduct and a statutory public nuisance.

V. Failure to close an area affected by solid waste disposal activities properly and completely creates a danger of pollution and a statutory public nuisance pursuant to Sections 401 and 402 of the Clean Streams Law, 35 P.S. Sections 691.401 and 691.402.

W. Hercules and the Department wish to resolve this matter expeditiously and without resort to litigation. Toward that end, by letter dated February 5, 1986, Hercules submitted a Work Plan for the implementation of a Remedial Investigation and Feasibility Study ("RI/FS") to the Department for its approval. The Department approved the Work Plan, as amended ("approved work plan") on October 15, 1987. In order to avoid the expense and inconvenience of an adjudicatory proceeding, Hercules and the Department hereby enter into this Consent Order and Agreement. Hercules expressly does not admit any liability or wrongdoing with respect to any of the matters addressed herein.

NOW, THEREFORE, this \_\_\_\_\_ day of \_\_\_\_\_, 1987, the parties intending to be legally bound and in consideration of the mutual covenants herein, the Respondent consents to the entry of the following Order:

ORDER

1. The following is an Order of the Department pursuant to Sections 104(7) and 601 of the SWMA, 35 P.S. Sections 6018.104(7) and 6018(602); Sections 5, 316, 402, and 610

of the Clean Streams Law, 35 P.S. Sections 691.5, 691.316, 691.402, and 691.610; and Section 1917-A of the Administrative Code, 71 P.S. Section 510-17.

2. In entering into this Consent Order and Agreement, the mutual objectives of the Department and Hercules ("Respondent") are: (a) to determine fully the nature and extent of the threat to the public health, welfare and the environment caused by the release or threatened release of any hazardous substances, pollutants or contaminants from the site; and (b) to evaluate alternatives for the appropriate extent of remedial action needed at the site. The activities conducted pursuant to this Consent Order and Agreement are subject to approval by the Department, and shall be consistent with the National Contingency Plan, 40 C.F.R. Part 300.68(a)-(j), as revised at 50 Fed. Reg. 47950 et seq. (November 29, 1985), and future revisions. The alternatives evaluated must include the range of alternatives described in the NCP at Section 300.68(f) and shall take into account the assessments and clean-up standards in Section 121 of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

3. Other Agreements and Orders. Respondent shall comply with any and all other agreements with or orders by the Department now in effect or hereinafter issued, and nothing herein shall be construed as intending to affect Respondent's obligations under these agreements or orders.

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PART I - REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

4. The Respondent shall implement the approved work plan for preparation of the Remedial Investigation/Feasibility Study ("RI/FS") in a manner acceptable to the Department and according to the schedule contained in the approved work plan, which is incorporated into and becomes an obligation of this Consent Order and Agreement.

REMEDIAL INVESTIGATION

5. Respondent shall conduct a Remedial Investigation ("RI") at the site and prepare a draft and final RI report according to the approved work plan and schedule and in accordance with the current EPA Guidance document entitled "Guidance on Remedial Investigations under CERCLA" EPA/540/G-85/002 (current version). The RI shall meet the requirements of CERCLA, SARA and the National Contingency Plan ("NCP") 40 C.F.R. Part 300.68(d) as revised at 50 Fed. Reg. 47950, and any future revisions thereof that become effective before submission of the final RI report.

6. Respondent shall not deviate from the standards and specifications for performance of the RI contained in the approved work plan and EPA RI/FS Guidance documents unless Respondent obtains the prior written approval of the Department for such variance.

7. Hercules shall file with the Department a written report outlining work plan tasks completed during the previous

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month as well as the tasks that Hercules intends to complete during the coming month. The report will reach the Department by the fifteenth of each month.

8. Any determination by the Department that a task, as described in the work plan, is complete constitutes nothing more than agreement that all elements of the task have been satisfactorily accomplished for the purposes of Paragraphs 5 and 6, and shall not be construed as a finding that changes or additions to the scope of the work plan are not necessary to achieve compliance with CERCLA, SARA, the NCP, the SWMA, and the Clean Streams Law. The Department's determination shall not be available as a defense to or in mitigation of any action brought to secure compliance with CERCLA, SARA, the NCP, the SWMA, or the Clean Streams Law.

9. If the Department determines that an RI task or the preliminary or final report has not been completed in accordance with the standards and specifications set out in the approved work plan, or the EPA RI Guidance documents, the Department shall notify the Respondent in writing, and include in its notification a schedule for completion. Respondent shall expeditiously complete the phase or report in accordance with the revised schedule. This paragraph shall not be construed to release Respondent from its obligation to pay stipulated penalties for failure to comply with the original time schedule contained in this Consent Order and Agreement.

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10. If the Department determines that a revision of the work plan is necessary because of new information acquired during implementation of the RI, the Department will inform Hercules of the changed requirements and the technological reasons for the new requirements. Respondent shall make those revisions and shall submit the revised work plan to the Department for its approval within a period to be specified by the Department, not to be less than twenty (20) days after notice from the Department. Respondent shall resume work within five (5) working days after the Department's written approval of the revision and schedule. Upon approval, the revision and schedule shall be incorporated herein and become an obligation of this Consent Order and Agreement. The Department specifically reserves its right to require additional work, amend any reports, conduct additional studies or to issue orders concerning revisions or changes to the RI or as otherwise authorized pursuant to the acts cited in Paragraph 1.

11. Respondent shall submit a Work Plan to the Department for performing an Endangerment Assessment ("EA") at the site. The EA Work Plan shall be prepared, and the EA shall be implemented, in accordance with the EPA Endangerment Assessment Handbook (August, 1985).

The Department shall notify Respondent in writing of the Department's approval or disapproval of the EA Work Plan or any portion thereof.

Within thirty (30) days of receipt of the Department's notification of its disapproval of the EA Work Plan, Respondent shall amend and submit to the Department a revised EA Work Plan. In the event of subsequent disapproval of the EA Work Plan, the Department retains the right to conduct a complete EA and to complete any necessary RI/FS activities at the site.

#### FEASIBILITY STUDY

12. Respondent shall conduct an FS to identify and assess remedial alternatives and prepare a draft and final FS report according to the Work Plan and schedule and in accordance with the EPA Guidance document entitled "Guidance on Feasibility Studies Under CERCLA," EPA/540/C-85-002, the SWMA, the Clean Streams Law, the Rules and Regulations promulgated thereunder, the procedures outlined in the NCP at 40 C.F.R. Sections 300.68(a)-(j) and 300.70 as revised at 50 Fed. Reg. 47912, CERCLA, SARA, and future revisions thereof that become final before submission of the final FS report. If the Department determines that the draft FS cannot be approved, Respondent shall submit the necessary revisions within the time specified by the Department.

13. The Department specifically reserves the right to require further work to assure that the FS adequately addresses the remedial action alternatives.

14. Feasibility Study - Inadequacies. If the Department determines that the FS, the draft FS report, or the final FS

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report has not been completed in accordance with the standards and specifications set out in the Work Plan or the EPA FS guidance document, it will notify Respondent in writing, including a schedule for completion. Respondent shall expeditiously complete the FS or FS report in accordance with the revised schedule. The revised schedule shall be incorporated into and become an obligation of this Consent Order and Agreement. This paragraph shall not be construed to release Respondent from its obligation to pay stipulated penalties for failure to comply with the original time schedule contained in this Consent Order and Agreement.

15. The Department will submit the final RI/FS report for public notice and comment.

#### PART II - GENERAL CONDITIONS

16. Interim Measures. If conditions are discovered at the Site which the Department determines may endanger the public health and safety or the environment, the Department may request that Respondent implement removal or other interim measures required by the Department within the time schedule contained in the written notice from the Department. Respondent shall notify the Department of its intent to implement those interim measures, or notify the Department of its intent not to do so, within the time specified by the Department, but no later than ten (10) days after such notice from the Department. If Respondent chooses to implement the interim measures, then such measures required by the Department pursuant to this paragraph shall be incorporated

into and become an obligation of this Consent Order and Agreement, and Respondent shall begin implementation of such measures within the time period specified by the Department, but no later than thirty (30) days after such notice by the Department. If Respondent chooses not to implement such interim measures, then the Department reserves the right to conduct a complete RI/FS or any portion thereof, implement the interim measures, refer this matter to EPA to conduct a complete RI/FS or any portion thereof and/or to implement the interim measures, to seek any remedy under the law for reimbursement of the costs thereof, and/or to seek any other appropriate relief.

17. Selection of Contractor. All response work performed pursuant to this Consent Order and Agreement shall be under the direction and supervision of personnel qualified in the investigation and clean-up of hazardous waste sites. At least thirty (30) days prior to the initiation of work under the work plan, Respondent shall notify the Department in writing of the identity and qualifications of the person(s) to be primarily responsible for, and/or any contractor and/or subcontractor to be used in carrying out the terms of this Consent Order and Agreement. The Department may disapprove the use of any supervisory personnel, and/or contractor and/or subcontractor if the Department believes they are not qualified to perform the response work. In the event of a disapproval, Respondent shall notify the Department within fifteen (15) days of the person, contractor, or subcontractor that will replace the one that was

disapproved, and the work schedule provided in the Scope of Work shall be extended for a period equal to the length of time it takes Respondent to find a new contractor or subcontractor, not to exceed fifteen (15) days.

18. Community Relations Plan. Respondent shall cooperate fully as the Department implements a Community Relations Plan and community relations activities. Respondent shall not take any action inconsistent with the Department's Plan or activities.

19. Sampling. Respondent shall promptly make available to the Department and EPA all technical information developed while implementing this Consent Order and Agreement. Respondent shall notify the Department and EPA at least seven (7) days in advance of any sampling, and shall split samples with those agencies upon request. Sampling and analysis shall be done according to criteria set forth in the approved work plan. These will include EPA protocols. Respondent shall use Quality Assurance/Quality Control practices and procedures, including chain-of-custody procedures, in accordance with guidance provided in EPA NEIC Policies and Procedures Manual, " May 1978, revised November 1984, EPA-330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order and Agreement.

20. Access, Information. Authorized representatives of the Department and EPA shall have the authority to enter and freely

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move about the site at all reasonable times during normal business hours for the purposes of, inter alia: inspecting records, operating logs and contracts related to the site, reviewing Respondent's progress in complying with this Consent Order and Agreement, conducting such tests as the Department or the project officer deem necessary, using a camera, sound equipment, or other documentary equipment, and verifying the data submitted to the Department by Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, pertaining to work undertaken pursuant to this Consent Order and Agreement. All parties with access to the site pursuant to this paragraph shall comply with all approved health and safety plans contained within the approved work plan; however, their failure to do so shall not release Respondent of its obligations under this Consent Order and Agreement. Nothing in this paragraph shall be construed to limit the Department's authority pursuant to Sections 608 and 609 of the SWMA, 35 P.S. Sections 6018.608 and 6018.609, or the common law, to inspect the property with or without a search warrant, nor to limit EPA's authority pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604. Hercules may assert a confidentiality claim covering part or all of the information requested by this Consent Order and Agreement pursuant to 40 C.F.R. Section 2-203(b). Information determined to be confidential will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B.

21. Record Preservation. The Department and Respondent agree that each shall preserve, during the pendency of this Consent Order and Agreement and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their subsidiaries, parent corporations, divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the site, despite any document retention policy to the contrary. After this six (6) year period, Respondent shall notify the Department at least thirty (30) calendar days prior to the destruction of any such documents. Upon request by EPA or the Department, Respondent shall make available to EPA or the Department such records or copies of such records. Additionally, if the Department requests that some or all documents be preserved for a longer period of time, Respondent shall comply with that request.

22. No variance shall occur from the standards and specifications contained in this Consent Order and Agreement or the approved plans unless Respondent obtains the prior written approval of the Department.

23. Force Majeure. If any event occurs which causes delay in the achievement of any requirement of this Consent Order and Agreement, Respondent shall have the burden of demonstrating to the Department that the delay was caused by circumstances beyond the reasonable control of Respondent which could not be overcome by due diligence. A force majeure event may include riot, civil disorder, act of God, weather so severe as to impede



construction, work slowdown or stoppage, strike, unavailability of materials or labor, inability to obtain site access, any delay or defaults of third parties under contract with Respondent with respect to the obligations undertaken hereunder, or any other cause beyond the control of Respondent, which Respondent is unable to prevent despite due diligence. Force majeure events shall not include increased costs or non-attainment of the goals and standards set forth in this Consent Order and Agreement, except as specifically provided herein. The Department will grant an extension of time for compliance which it determines is justified to compensate for the unavoidable delay and shall not impose any penalties in such circumstances. In order for Respondent to take advantage of this paragraph, it shall notify the Department in writing within seven (7) business days of the date of discovery of the event causing the delay. Notification shall be made to the Department's Project Officer as described in Paragraph 40 herein, and shall include all relevant documentation, such as copies of third-party correspondence, and a notarized affidavit from a responsible official of Respondent, specifying the length and causes of delay and Respondent's efforts to perform its obligation(s) on time. Defaults and delays of third parties under contract with Respondent shall not be grounds for extension unless such contracts include a provision reciting that "time is of the essence." Respondent's failure to comply with requirements of this paragraph specifically and in a timely

fashion shall render this paragraph null and void and of no effect as to the event which forms the basis for the extension request. The total of all extensions under this paragraph, individually or in conjunction with previous extensions, shall not exceed one hundred twenty (120) days.

24. Penalties. If Respondent fails to comply with any of the obligations in this Consent Order and Agreement in a timely manner, it shall pay civil penalties in the amount of two hundred fifty (\$250.00) dollars per day for the first seven (7) days of delay, and five hundred (\$500.00) dollars per day for each subsequent calendar day on which it fails to complete performance. Such payment shall be made by check or money order payable to the "Commonwealth of Pennsylvania, Solid Waste Abatement Fund."

25. The Department agrees to review expeditiously all reports and other submitted to it by Hercules which relate to activities conducted pursuant to this Consent Order and Agreement.

26. Failure to comply with any provision of this Consent Order and Agreement within the time specified shall be a material violation and shall entitle the Department to pursue all available remedies and penalties for violation of a Departmental order. Such remedies and penalties shall be in addition to, and not in lieu of, those imposed by this Consent Order and Agreement, including Paragraph 24.

### RESERVATION OF RIGHTS

27. Nothing in this Consent Order and Agreement authorizes any violation of any permit, law, or regulation. The Department specifically reserves all rights to institute civil, criminal, equitable, and administrative proceedings for past, existing, and future violations of any environmental law or regulation by Respondent or any other persons.

28. The Department expressly reserves all rights and defenses that it may have, including the Department's right to both disapprove of work performed by Respondent and to require that Respondent perform tasks in addition to those detailed in this Consent Order and Agreement. In the event that Respondent declines to perform any additional and/or modified tasks, the Department shall have the right to seek enforcement of this Consent Order and Agreement or to undertake any work required. In addition, the Department reserves the right to undertake removal actions and/or remedial actions at any time. The Department reserves the right to seek reimbursement from Respondent thereafter for the costs incurred by the Commonwealth of Pennsylvania.

29. Nothing in this Consent Order and Agreement shall 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 not a signatory to this Consent Order and Agreement 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.

30. Reimbursement of Costs. At the end of each year, the Department shall submit to Respondent an accounting of all response and oversight costs incurred by the Department with respect to this Consent Order and Agreement. Respondent shall, within thirty (30) calendar days of receipt of that accounting, remit a check for the amount of those costs made payable to the "Solid Waste Abatement Fund." Checks should specifically reference the identify of the site and be addressed to:

Department of Environmental Resources  
Division of Emergency & Remedial Response  
Bureau of Waste Management  
P.O. Box 2063  
Harrisburg, Pennsylvania 17120-2063

(A copy of the transmittal letter should be sent to the Project Officer).

31. This Consent Order and Agreement shall apply to and be binding upon Respondent, its agents, successors, and assigns and upon all persons, contractors, subcontractors, and consultants acting under or for Respondent.

32. Prior to the effective date of transfer by Respondent of any legal or equitable ownership, leasehold or other interest in the site or in any part of that site, Respondent shall serve a copy of this Consent Order and Agreement on the prospective successor or assignee in interest and notify the Department, in writing, of such prospective transfer. The terms and provisions

of this Consent Order and Agreement shall remain in full force and effect as between the Department and any assignee or successor in interest of Respondent.

33. No change in ownership or corporate or partnership status relating to the site or Respondent shall in any way alter Respondent's responsibility under this Consent Order and Agreement.

34. Pursuant to Section 405 of the SWMA, 35 P.S. Section 6018.405, the grantor, in any future conveyance of the site or any part of the site, shall include in the property description of the deed an acknowledgement of the solid waste disposal which has occurred at the site. Such acknowledgement shall include a description of the types of hazardous substances and the exact location of the hazardous substances that have been detected at the site. Such amended property description shall be made a part of the deed for all future conveyances or transfers of the subject property.

35. Within thirty (30) days of execution of this Consent Order and Agreement, Respondent shall take steps to adequately and permanently restrict vehicular access to the site <sup>AK</sup>~~Avenue~~; and shall post signs of a permanent nature around the entire site perimeter which will adequately advise the public regarding potential risks associated with the site and which will state: "Caution: Waste Disposal Site - Access Restricted to Authorized Personnel Only."

36. By December 15, 1987, Respondent shall submit to the Department a Site Operations Plan ("SOP"). The SOP shall include a Health and Safety Plan prepared in accordance with "Guidance on Remedial Investigations under CERCLA EPA/540/G-85/002 (current version); a Site Sampling Plan; and a Quality Assurance Project Plan ("QAPP") prepared in accordance with "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, EM-330/9-78-001-R, and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80.

The Department shall notify Respondent in writing of the Department's approval or disapproval of the SOP or any portion thereof.

Within thirty (30) days of receipt of the Department's notification of its disapproval of the SOP, Respondent shall amend and submit to the Department a revised SOP. In the event of subsequent disapproval of the SOP, the Department retains the right to conduct a complete RI/FS at the site.

37. Respondent shall serve a copy of this Consent Order and Agreement on all contractors who perform work under this Consent Order and Agreement.

38. Dispute Resolution. If a dispute arises with respect to the interpretation or fulfillment of provisions of this Consent Order and Agreement, Hercules may elect to pursue dispute resolution pursuant to this paragraph. Within fifteen (15) business days of the date on which Hercules receives notice

from the Department of any determination which Hercules disputes, Hercules shall submit to the Department a written statement of its objections and its reasons therefor. A supervisory official of the Department at a level equal to or higher than the Chief of the Division of Solid Waste Management shall consider Hercules' statement and shall notify Hercules within fifteen (15) business days thereafter whether he or she will alter the Department's determination to satisfy Hercules' objections. The Department will provide a written statement of its final determination. Hercules reserves all appeal and other rights it may have. Hercules agrees not to appeal any action of the Department taken pursuant to this Consent Order and Agreement until the Department brings an action to enforce this Consent Order and Agreement or brings an action to recover costs under Section 107 of SARA. In consideration thereof, the Department agrees that no Department action or determination pursuant to this Consent Order and Agreement and Hercules' failure to appeal such action shall be asserted or treated as binding or conclusive or a defense against Hercules or shall estop Hercules from raising any objections it may have to such action in any subsequent legal action by Hercules, the Department, EPA, or any other person.

39. No agreement, approval or determination by the Department pursuant to this Consent Order and Agreement shall be construed as a guarantee of success, waiver of further responsibility or determination of ultimate compliance with any law.

40. All correspondence with the Department concerning this Consent Order and Agreement and required notifications shall be addressed to:

Department of Environmental Resources  
Mark Gorman, Project Officer  
1012 Water Street  
Meadville, Pennsylvania 16335.

The Department shall provide Respondent with prior written notice of any change in the address or addressee.

41. All correspondence with Respondent concerning this Consent Order and Agreement and required notifications shall be addressed to:

Marvin W. Livesay  
Hercules, Incorporated  
Hercules Plaza  
Wilmington, Delaware 19894

and

J. E. Henry  
Hercules, Incorporated  
State Highway 837  
West Elizabeth, Pennsylvania 15088-0567

Respondent shall provide the Department with prior written notice of any change in the address or addressee.

42. Prior drafts of this Consent Order and Agreement shall not be used in any litigation involving the interpretation of this document.

43. It is the intent of the parties hereto that the clauses of this Consent Order and Agreement are severable and should any

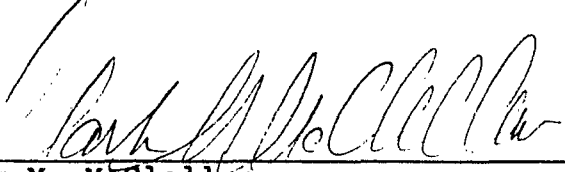


part of this Consent Order and Agreement be declared by a court of law to be invalid or unenforceable, the other clauses shall remain in full force and effect.

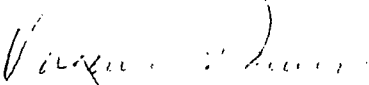
44. This is the entire Consent Order and Agreement of the parties hereto and no alteration or amendment shall be valid unless set out in writing and signed by the parties.

Consent Order and Agreement executed by the Commonwealth of Pennsylvania, Department of Environmental Resources, this Second day of November, 1987.

FOR THE COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL RESOURCES

  
\_\_\_\_\_  
Mark M. McClellan  
Deputy Secretary for  
Environmental Protection

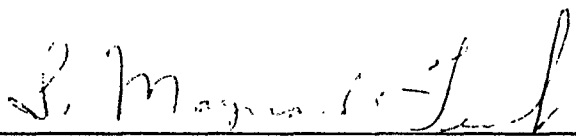
APPROVED AS TO LEGALITY AND FORM:

  
\_\_\_\_\_  
Virginia Davison  
Assistant Counsel

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The undersigned hereby covenant and agree that they are authorized to consent to the Order and Agreement on behalf of Respondent.

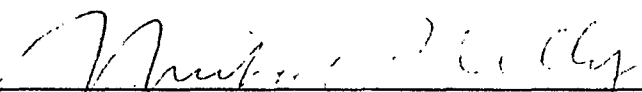
FOR HERCULES, INC.

  
\_\_\_\_\_  
Name  
Title Vice-President AND General Counsel

CORPORATE SEAL

\_\_\_\_\_  
Name  
Title

APPROVED AS TO LEGALITY AND FORM

  
\_\_\_\_\_  
Attorney for Hercules

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