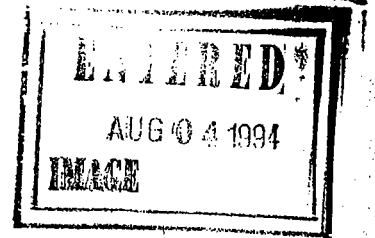


IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



STATE OF OHIO, ex rel.,
LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

vs.

DIVERSIFIED PRODUCTS, INC.,

RONALD BALL, PRESIDENT
DIVERSIFIED PRODUCTS, INC.,

and

LARRY BALL

Defendants.

Case No. A-88-08164

JUDGE JOHN P. O'CONNOR

CONSENT ORDER BETWEEN THE
STATE OF OHIO AND DIVERSIFIED
PRODUCTS, INC. AND RONALD
BALL

The Plaintiff, State of Ohio, ex rel. the Attorney General of Ohio ("State" or "Plaintiff"), having filed the Complaint in this action against Defendants, at the request of the Director of the Ohio Environmental Protection Agency ("OEPA" or "Ohio EPA"), to enforce the State of Ohio's hazardous waste law and the rules promulgated thereunder concerning the Defendants' waste handling practices at the Diversified Products, Inc. facility located at 11300 Jefferson Avenue, Cincinnati, Ohio 45421 (hereinafter also referred to as the "Facility"), and Plaintiff and Defendants Diversified Products, Inc., Ronald Ball and Larry Ball (hereinafter "DP", "Balls" or "Defendants") having consented to entry of this Order;

THEREFORE, without trial and upon the consent of the Plaintiff and

Defendants Diversified Products, Inc., and the Balls (also hereinafter referred to as the "Defendants") hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. PERSONS BOUND

The provisions of this Consent Order shall apply to and be binding upon Defendant Diversified Products, Inc. its agents, officers, employees, assigns, successors, and predecessors in interest; and Defendants Ronald and Larry Ball. Defendants shall provide a copy of this Consent Order to each consultant or contractor it employs to perform any work referenced herein. Should Defendants re-commence operations at its Facility, Defendants shall also provide a copy of this Consent Order to all employees. Further, Defendants shall provide a copy of this Consent Order to any independent contractor employed to handle, treat and/or dispose of wastes generated, stored and/or disposed of by Defendants until such time as Defendants Diversified Products, Inc. and the Balls certify to the Ohio EPA, pursuant to Ohio Administrative Code ("O.A.C.") Rule 3745-66-15, that all areas of the Diversified Products, Inc. Facility where hazardous wastes have been treated, stored and/or disposed of, by Diversified Products, Inc., have been closed in accordance with the specifications contained in the approved closure plan attached as Appendix A to this Consent Order.

II. SATISFACTION OF LAWSUIT

Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants Diversified Products, Inc. and the

Balls for all claims alleged against them in the Complaint including continuing violations occurring subsequent to the filing of the Complaint and before entry of this Consent Order. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations or conditions which occur after the filing of this Consent Order. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendants to eliminate or mitigate conditions at the Facility arising after the date hereof which may present a threat to the public health, welfare or the environment. In addition, the State of Ohio hereby specifically reserves the right to proceed against any other party or entity for the violations alleged in the Complaint. The State of Ohio also reserves the right to proceed against any party or entity, including the Defendants, for any removal, remedial or corrective action, monitoring or testing that must be conducted at the Diversified Products, Inc. Facility, or any costs incurred by the Ohio EPA under Ohio Revised Code ("O.R.C.") Sections 3734.20 through 3734.20 and 3734.27.

In the event that Ohio EPA determines that Defendant Diversified Products, Inc. and/or Defendant Ronald Ball and/or Defendant Larry Ball are financially capable, Defendants agree to implement the modified closure plan attached as Appendix "A" attached hereto. Defendants agree to close the Diversified Products, Inc. facility pursuant to the modified closure plan, as approved by the Ohio EPA, and pursuant to O.A.C. Rule 3745-66-13.

III. JURISDICTION AND VENUE

The Court has both personal and subject matter jurisdiction over Defendants Diversified Products, Inc., Ronald Ball and Larry Ball. The Complaint states a claim upon which relief can be granted against the Defendants under Chapter 3734 of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

IV. PERMANENT INJUNCTION

Defendants are hereby permanently enjoined and ordered to comply with all of the provisions of Chapter 3734 of the Ohio Revised Code and all of the rules promulgated thereunder including, but not limited to, the applicable generator requirements contained in O.A.C. Chapter 3745-52, with respect to any and all future waste handling activities at the Diversified Products, Inc. Facility. Defendants Diversified Products, Inc., Ronald Ball and Larry Ball are also permanently enjoined and ordered to refrain from engaging in any storage, treatment or disposal of hazardous waste for which a hazardous waste facility installation and operation permit is necessary without first obtaining such a permit from the Hazardous Waste Facility Board.

V. CIVIL PENALTY

The State hereby specifically reserves any and all future and existing rights against the Defendants to seek a civil penalty. Entry of this Consent Order without the payment of a civil penalty does not constitute a waiver of the States right to seek and collect a civil penalty from Defendant Diversified Products, Inc. and/or Ronald

Ball and/or Larry Ball. The Defendants hereby agree to joint and several liability for payment of the civil penalty.

VI. RETENTION OF JURISDICTION

The Court will retain jurisdiction of this action for the purpose of overseeing that Defendants carry out the terms and conditions of this consent Order and comply with O.R.C. Chapter 3734 and the rules adopted thereunder.

VII. INSPECTIONS

Pursuant to O.R.C. Section 3734.07, Defendants are ordered to do everything within their power and control to allow employees, representatives, and agents of the Ohio EPA, upon proper identification, to enter upon the Diversified Products, Inc. Facility at reasonable times, to inspect, investigate, take samples and pictures and examine or copy records whenever located in order to determine compliance with the terms of this Consent Order and O.R.C. Chapter 3734 the rules promulgated thereunder. Nothing in this Consent Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct regular and routine inspections pursuant to statute or regulation at the Diversified Products, Inc. Facility.

VIII. NOTICE

Any submission to the Ohio EPA as required by this Consent Order, shall be delivered to:

1. Ohio EPA
Southwest District Office
40 South Main Street
Dayton, Ohio 45402-2086

Attn: Mark Boden

2. Ohio EPA
Division of Solid and Hazardous Waste Management
1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43266-0149
Attn: John Schierberl

IX. EFFECT OF CONSENT ORDER

By consenting to the entry of this Consent Order, Defendants Diversified Products, Inc., Ronald Ball, and Larry Ball acknowledge and admit their liability for the violations as alleged by the State in its Complaint and Amended Complaint. In addition, by consenting to reference of the Diversified Products, Inc. site as a "facility", Defendants Diversified Products, Inc., Ronald Ball and Larry Ball acknowledge and admit that the site is a "facility" as that term is used in O.R.C. 3734.01(N) or O.A.C. 3745-50-10(A)(32).

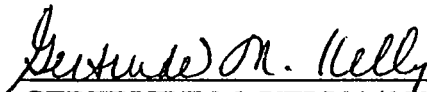
X. COURT COSTS

Defendants Diversified Products Ronald Ball, and Larry Ball agree to pay the court costs of this action.


JOHN P. O'CONNOR
JUDGE, COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO

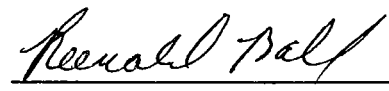


GERTRUDE M. KELLY (0039768)
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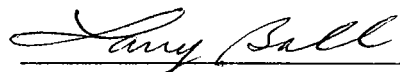


DAVID T. BURGESS (0029188)
T. David Burgess Co., L.P.A.
110 North Third Street
Williamsburg, Ohio 45176-1322

Attorneys for Defendants
Diversified Products, Inc. and
Ronald Ball
(513) 724-2252



RONALD BALL
Individually and on behalf of
Diversified Products, Inc. as its
President



LARRY BALL
In his individual capacity



APPENDIX A

State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149
(614) 644-3020. Fax (614) 644-2329

RECEIVED
JAN 05 1990
Richard F. Celeste
Governor
Environmental Protection Agency

CLOSURE PLAN APPROVAL

CERTIFIED MAIL

January 3, 1990

Re: Closure Plan
Diversified Products
OHD 004 471 413

John R. Deho
Diversified Products
11300 Jefferson Avenue
Sharonville, Ohio 45241

Dear Mr. Deho:

On May 12, 1988, Diversified Products submitted to Ohio EPA a closure plan for a hazardous waste container storage area located at 11300 Jefferson Avenue, Sharonville, Ohio. The closure plan was disapproved on November 15, 1988. No response to this action was received. The closure plan was submitted pursuant to Rule 3745-66-12 of the Ohio Administrative Code (OAC) in order to demonstrate that Diversified Products' proposal for closure complies with the requirements of OAC Rules 3745-66-11 and 3745-66-12.

The public was given the opportunity to submit written comments regarding the closure plan of Diversified Products in accordance with OAC Rule 3745-66-12. No comments were received by Ohio EPA in this matter.

Based upon review of the company's submittal, I conclude that, with modifications as set forth below, the closure plan for the hazardous waste facility at Diversified Products meets the performance standard contained in OAC Rule 3745-66-11 and complies with the pertinent parts of OAC Rule 3745-66-12.

The closure plan submitted to Ohio EPA by Diversified Products is hereby approved with the following modifications:

1. Specify what type of products are painted. Recent inspections indicate that aluminum parts and fabrications are painted.
2. The "Description of Waste Management Unit To Be Closed" section does not adequately describe the waste types that have been stored on the container storage pad. The F003-F005 solvents are not broken down into their standard chemical names. Commercial names (e.g., Xolay) shall not be used. Results from representative waste samples collected by OEPA personnel showed that as of January 28, 1988, this facility was storing waste streams containing xylene, acetone, methyl isobutyl ketone (F003 solvents), and toluene and methyl ethyl ketone (F005 solvents). These

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mary Caveni Date 1-3-90

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chemicals shall be listed by standard chemical name and USEPA hazardous waste number. In addition, during an inspection Mr. Deho stated that at one time during the operation of the facility paints containing certain metals were used. These may have contained E.P. Toxic metals. This information shall be included in the description of waste types.

3. No timetable is given for closure activities. Diversified Products shall prepare a schedule which shows all critical dates for closure such as cleaning the container storage area, sample collection to verify decontamination, the independent engineer's certification of closure and any other pertinent activities. The schedule shall begin with the date of Director's approval and not rely on calendar dates.
4. Diversified Products shall prepare a personnel safety plan addressing personnel protection levels, protective clothing and decontamination procedures for personnel and equipment.
5. Diversified Products shall include an estimate of the maximum quantity of inventory (include the number of drums and EPA hazardous waste numbers) that will be in the storage container area at the time of closure. All hazardous wastes shall be removed within 90 days receipt of this letter.
6. No "clean" level is given for the final rinse water from the storage area. The storage area shall be considered decontaminated when the final rinseate does not exceed the public drinking water maximum contaminant level (MCL) for any hazardous waste constituent. If an MCL is not available for the constituent of concern, the maximum contaminant level goal (MCLG) shall be used. If the MCL or MCLG is less than the contaminant's analytical detection limit using methods found in USEPA Publication SW-846, the SW-846 analytical detection limit shall be used as the clean standard. If neither an MCL or an MCLG is available, 1 mg/l shall be used as the clean standard. Rinseates exceeding the above criterion for any non-naturally occurring RCRA regulated compound or the maximum concentration for any EP Toxicity parameter shall be managed as hazardous waste.
7. There is no description of how equipment used during closure activities will be cleaned. All equipment shall be scraped and washed to remove waste residues. The residues shall be managed as hazardous waste. Equipment cleanliness shall be evaluated using the criteria specified in Modification No. 6 above.
8. The plan does not state a clean level for soil in the area. Diversified Products shall select from Attachment B a means of determining the "clean" level for naturally occurring metals for soils around the storage pad.

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By: Mary Cassin Date 1-3-90

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9. If Diversified Products selects Alternative A from Attachment B, Diversified Products shall select at least sixteen (16) background sampling points in consultation with Tim Staiger, Ohio EPA, SWDO. These points shall be selected to represent an area not directly affected by any waste activities. All points and sampling data from these points shall be reviewed and approved by Ohio EPA. Analytical data from these points shall be submitted to Tim Staiger, Ohio EPA, SWDO, within ten (10) days of receipt of Diversified Products. Ohio EPA may reject any sampling point.

10. Diversified Products shall collect at least one (1) soil sample from each side of the pad for a minimum of three (3) discrete samples. Diversified Products shall provide a map showing soil sampling locations. Samples shall be collected at 6 inch intervals to a depth of 18 inches. The nine (9) samples shall be analyzed for all RCRA regulated waste solvents stored in the container storage area and EP toxicity metal parameters. All analyses shall be conducted using methods found in USEPA Publication SW-846, "Test Methods for Evaluating Solid Wastes".

Soils contaminated with heavy metals shall be considered hazardous waste when the EP Toxicity test results exceed the concentrations established as hazardous for the extract (OAC 3745-51-24). Soils contaminated with heavy metals shall be managed as solid waste when the concentrations of heavy metals (using the analysis for total metals) exceeds the background measurements determined for total metals, but EP Toxicity test results for the same soils do not exceed the concentrations established as hazardous for the extract (OAC 3745-51-24). Both EP toxicity tests and analyses for total metals shall be performed on all soil samples from potentially contaminated areas in order to determine a management strategy for the soils (i.e., manage as hazardous waste, solid waste, or determine that there is no contamination present). Background soil samples need not be analyzed for EP toxicity unless Ohio EPA determines that such analysis is appropriate.

Soils contaminated with non-naturally occurring, RCRA-regulated hazardous constituents that may be derived from listed hazardous wastes (e.g., F003, or F005 wastes) shall be considered hazardous waste and removed to an off-site treatment, storage or disposal facility. Soils contaminated with non-naturally occurring, RCRA-regulated hazardous constituents derived solely from characteristic hazardous wastes shall be removed and managed as a solid waste if the soil does not exhibit a characteristic of a hazardous waste. Soils exhibiting a characteristic of a hazardous waste shall be considered hazardous waste and removed to an off-site treatment, storage or disposal facilities.

All soils contaminated with F003 and/or F005 listed wastes are subject to land disposal restrictions.

11. Diversified Products shall prepare a sampling plan that fully describes the sampling methods, equipment and analytical methods to be used.

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By: Mary Carmi Date 1-3-90

Ohio Environmental Protection Agency
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12. The independent, registered, professional engineer shall be present at all major closure activities (i.e., pressure washing the storage pad, collecting rinseate and soil samples, etc.). The frequency of inspections by the independent engineer must be sufficient to determine the adequacy of each critical activity. Ohio EPA reserves the right to request a copy of the engineer's log book for verification purposes prior to confirming that closure was completed in accordance with the approved closure plan.
13. Diversified Products shall provide closure cost estimates for the closure activities given in the plan.
14. Responses to Modification Nos. 1-13 above shall be submitted to Tim Staiger, Ohio EPA, Southwest District Office, and Randy Meyer, Ohio EPA, Central Office, for review and approval within ten (10) days of receipt of this letter.

Please be advised that approval of this closure plan does not release Diversified Products from any responsibilities as required under the Hazardous and Solid Waste Amendments of 1984 regarding corrective action for all releases of hazardous waste or constituents from any solid waste management unit, regardless of the time at which waste was placed in the unit.

Notwithstanding compliance with the terms of the closure plan, the Director may, on the basis of any information that there is or has been a release of hazardous waste, hazardous constituents, or hazardous substances into the environment, issue order pursuant to Section 3734.20 et seq of the Revised Code or Chapters 3734 or 6111 of the Revised Code requiring corrective action or such other response as deemed necessary; or initiate appropriate action; or seek any appropriate legal or equitable remedies to abate pollution or contamination or to protect public health or safety or the environment.

Nothing here shall waive the right of the Director to take action beyond the terms of the closure plan pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA") or to take any other action pursuant to applicable Federal or State law, including but not limited to the right to issue a permit with terms and conditions requiring corrective action pursuant to Chapters 3734 or 6111 of the Revised Code; the right to seek injunctive relief, monetary penalties and punitive damages, to undertake any removal, remedial, and/or response action relating to the facility, and to seek recovery for any costs incurred by the Director in undertaking such actions.

You are notified that this action of the Director is final and may be appealed to the Environmental Board of Review pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Board of Review within thirty (30) days after

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By: Mary Cavan Date 1-3-90

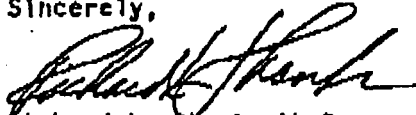
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notice of the Director's action. A copy of the appeal must be served on the Director of the Ohio Environmental Protection Agency and the Environmental Enforcement Section of the Office of the Attorney General within three (3) days of filing with the Board. An appeal may be filed with the Environmental Board of Review at the following address: Environmental Board of Review, 236 East Town Street, Room 300, Columbus, Ohio 43266-0557.

When closure is completed, the Ohio Administrative Code Rule 3745-66-15 requires the owner or operator of a facility to submit to the Director of the Ohio EPA certification by the owner or operator and an independent registered professional engineer that the facility has been closed in accordance with the approved closure plan. The certification by the owner or operator shall include the statement found in OAC 3745-50-12(D). These certifications should be submitted to: Ohio Environmental Protection Agency, Division of Solid and Hazardous Waste Management, Attn: Thomas Crepeau, Program Planning and Management Section, P.O. Box 1049, Columbus, Ohio 43266-0149.

Sincerely,



Richard L. Shank, Ph.D.
Director

RLS/RM/pas

cc: Randy Meyer, Ohio EPA, DSHWM
Lisa Pierard, USEPA-Region V
Joel Morbito, USEPA - Region V
Tom Crepeau, Ohio EPA, DSHWM Central File
Tim Staiger, SWDO, Ohio EPA
Don Marshall, SWDO, Ohio EPA

2006U

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By: Mary Carver Date 1-3-90

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ATTACHMENT B

NATURALLY OCCURRING ELEMENTS OR COMPOUNDS

Alternative A - Soils containing naturally occurring elements in the area of the hazardous waste management unit shall be considered to be contaminated if concentrations in the soils exceed the mean of the background samples plus two standard deviations.

All metals analyses must be for total metals.

Alternative B - Soils containing RCRA-regulated metals shall be considered to be contaminated if concentrations in the soil exceed the upper limit of the range for Ohio farm soils, as given below:

<u>Metal</u>	<u>Range (Total Metal Concentration in ug/g)</u>
Cadmium	0 - 2.9
Chromium	4 - 23
Lead	9 - 39

(Source: Logan, T.J. and R.H. Miller, 1983. Background levels of Heavy Metals in Ohio Farm Soils. Research Circular 275, Ohio State University, Ohio Agricultural Research and Development Center, Wooster.)

All metals analyses must be for total metals.

Ohio EPA may reject any of the above alternatives based on site-specific information. Also, the Agency may accept alternate statistical methods if the owner/operator can demonstrate that the statistical method proposed is environmentally acceptable and is technically superior.

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By: Mary Coveri Date 1-3-90

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The following is a proposed closure plan for the facility located at 11300 Jefferson Avenue, Sharonville, Ohio.

Step 1: Corrective Action for the Continuing Release

On April 14 and 15, 1988, there were 136 drums of waste (F003-P005) removed from the Sharonville location by Conn/Central transporters (US EPA ID #INO 981953250). These drums were taken to:

Kyans Oil Co.

3601 Parker

Louisville, Kentucky 40212

The EPA ID number for the designated facility was KYD 00821942.

On May 3, 1988, "The Generator Original Copies" of the manifest were received from Kyana Oil Co. and copies were forwarded to the EPA office. Total cost for the removal was \$9520.

Ongoing efforts to prevent the leakage of any hazardous materials into the environment include:

1. Inspection of the property for any stray barrels.
2. The deheading and inspection of all remaining empty barrels to certify that they contained no hazardous waste materials.
3. The establishment of a program to conform to the standards of a 100-1000 kg/mo generator.
 - a. Containers are clearly marked "Hazardous Waste" and the type is identified.
 - b. The drums are dated.
 - c. The containers are in good condition
 - d. Containers are closed except when filling.
 - e. Inspections for leaks are done daily, and a written record kept.

- f. A property line buffer zone exists.
- g. Stored waste is taken off site within the 180 day limit.
- h. A contingency plan has been filed with the EPA and the Sharonville Fire Department.
- i. Employee safety meetings are held on a monthly basis.
- j. Emergency equipment is inspected weekly.

TYPE OF INDUSTRY

The Jefferson Avenue facility is a paint line operation, Primary SIC Code is 3490. The plant is located in Sharonville Ohio, the zip code location is 45241.

Approximate size of the building is 100' x 200', there is a concrete pad at the rear of the building. The pad is 100' x 200' and is currently used for general storage as well as waste storage.

DESCRIPTION OF WASTE MANAGEMENT UNIT TO BE CLOSED

The waste management unit to be closed consists of a concrete pad behind the primary building. This is a poured concrete pad 100 feet wide and 200 feet long. The pad is 6 inches thick and has approximately 8 inches of gravel below. There are 5 expansion joints running east to west in the pad. Some evidence of surface cracking and pitting are apparent on the pad. There is no shoulder or other provision to channel or prevent surface water run off from the pad.

The age of the pad is approximately 15 years. This facility began operation in early 1973.

The current waste stream consists of F003-F005 solvents primarily Xolay with some M.E.L. We have had an E.P. tox for metals and show no problems with a representative sample for current paint sludge.

The maximum inventory for which records are available was 136-55 gallon drums removed, as indicated earlier. These were all F003-F005 waste.

SCHEDULE FOR CLOSURE

As indicated, drums of waste were consolidated and removed on April 14 and 15 of this year.

Additional work required to complete closure:

1. Approximately two weeks will be required to remove the empty drums, steel beams, vehicles and other rubble from the pad area.
2. Contracting of Services

Perhaps the most difficult problem in arranging plant closure is the process required to locate and obtain the bids for the required work. The unregulated environment in which the pricing of these services takes place has resulted in a wide range in cost and quality. Small companies with limited funds find it difficult to finance such operations and difficult to get the companies to follow through on the bidding process.

In light of the problems which are involved, it will require 45 days to secure the necessary services.

Should a problem be encountered due to the availability of funds or a lack of interest in doing the work, the EPA will be notified of that situation as soon as it is apparent.

DECONTAMINATION EFFORTS

The following procedure will be carried out in order to decontaminate the areas where hazardous waste was stored. Decontamination efforts will be performed by Diversified Products where feasible, or a qualified subcontractor, when equipment or technical assistance is needed.

1. Areas of dried paint on the pad will be removed mechanically and retained as a hazardous waste for disposal.
2. The pad is to be pressure cleaned with at least two rinses. Analysis for F003-F005 solvents to be required for the final rinse.

3. Soil samples will be taken at the three edges of the pad and analyzed for contamination with solvents which may have been washed from the pad surface. All locations of soil samples will be marked and indicated on the map of the pad area.
4. Information on sampling methods, equipment used, and analytical methods as well as quality assurance will be provided by the sub-contract company completing those operations.

CERTIFICATION

Upon completion of the closing procedures certification will be provided by both the owner and the independent engineer under contract.

STATUS OF FACILITY

The status of the facility after closure will be that of a 100-1000 kg/mo. generator and will be operated under "less than 90 day storage of hazardous waste accumulations.

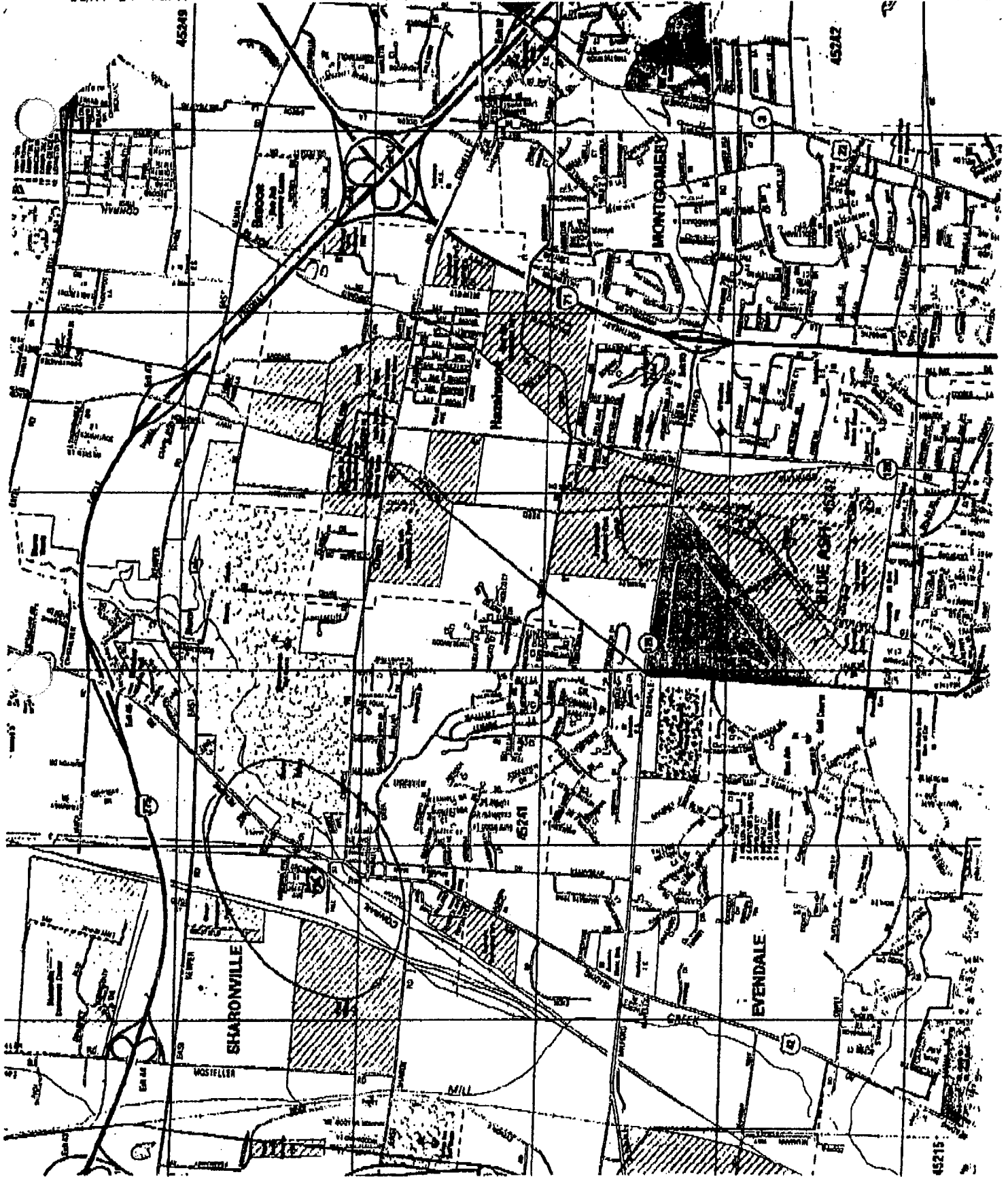
LENGTH OF CLOSURE ACTIVITIES

Closure activities will be completed within 180 days after the approval of the closure plan.

John R. Dett
05-10-88

45248

45242



45215