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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

250392

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

CASE NO.
JUDGE

Plaintiff,

vs.

054 WILLIAM E. AURELIUS

PROTOTYPE DEVELOPMENT, INC.
dba PDI Transport
et al.

Defendants.



CONSENT ORDER BETWEEN THE STATE OF OHIO,
PROTOTYPE DEVELOPMENT, INC. AND JOSEPH D. ALVADO

The Plaintiff, State of Ohio, ex rel. Lee Fisher, Attorney General of Ohio ("State" or "Plaintiff"), having filed the Complaint in this action against Defendants Prototype Development, Inc., and Joseph D. Alvado (hereinafter "Defendants" unless otherwise specifically referenced), at the request of the Director of the Ohio Environmental Protection Agency ("OEPA" or "Ohio EPA") to enforce the State of Ohio's solid and hazardous waste, water pollution control and nuisance laws and the rules promulgated thereunder concerning the Defendants' waste handling, storage, treatment and/or disposal practices at the facility located at 7750 Hub Parkway, Cleveland, Cuyahoga County, Ohio (hereinafter the "facility"), and Plaintiff and Defendants having consented to entry of this Order;

THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

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I. PERSONS BOUND

1. The provisions of this Consent Order shall apply to and be binding upon Prototype Development, Inc. ("Prototype"), Joseph D. Alvado ("Alvado"), their agents, officers, employees, assigns, successors in interest, and those persons in active concert or participation with them. Defendants Alvado and Prototype shall provide a copy of this Consent Order to each person, consultant or contractor employed to perform work referenced herein until such time as certification is submitted to the Ohio EPA, pursuant to Ohio Administrative Code ("O.A.C.") Rule 3745-66-15, that the facility has been closed in accordance with the State of Ohio's hazardous waste laws, the rules promulgated thereunder, and the specifications in the closure plan approved as a final action by the Ohio EPA in accordance with Section V of this Order.

II. SATISFACTION OF LAWSUIT

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendants for all claims against Defendants alleged in the Complaint. 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 the Complaint or which involve locations other than the facility. Further, the State of Ohio covenants not to sue

PDI-ACQ, Inc., Michael E. Friedman, Irwin G. Haber, Edward S. Rosenthal, Gregory S. Widell, Paul Wolf or Edward A. Kaplan ("the lessees") for all environmental conditions existing at the facility upon entry of this Order due to violations of all applicable laws and regulations over which Ohio EPA has jurisdiction to regulate that were committed by Defendant Prototype at the facility prior to the entry of this Consent Order, provided that the lessees completely comply with the following terms and conditions:

- a.) the lessees do not become owners of the site and conduct business on the site only as lessees; and
- b.) the lessees do not in any way engage in treatment, storage and/or disposal of hazardous waste at the hazardous waste units that are identified in and are the subject of the closure plan submitted by Defendant Alvado as described in Section V of this Order nor disturb or contribute to these units; and
- c.) the lessees do not in any way engage in treatment, storage and/or disposal of hazardous waste at hazardous waste management units that lessees know exist or may be discovered at the facility and are not associated with paragraph 2.b.) above, nor disturb or contribute to those units; and
- d.) the lessees agree not to bring any legal action against the State of Ohio for any loss incurred by the lessees in the event the State is required to conduct any remediation and/or removal activities on the leased property located at 7750 Hub Parkway; and
- e.) the lessees agree not to hinder, thwart, obstruct or prevent representatives of Ohio EPA to enter upon the facility at any reasonable

time to inspect, investigate, take samples and pictures and examine or copy records in order to determine compliance with the terms and conditions of Ohio Revised Code ("O.R.C.") Chapters 3704., 3734., 3767, & 6111. Nothing in this release shall limit the rights of the Ohio EPA or the US EPA to conduct regular inspections or investigations pursuant to statute, regulation or permit.

The representations contained in the affidavits of the lessees attached hereto are true and accurate representations of the full disclosure of relationship between the lessees, Defendant Joe Alvado and Defendant Prototype. Furthermore, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to take any cost recovery, injunctive, or other legal action against any person, including but not limited to any or all Defendants, except the lessees in accordance with Section II of this Order, pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9601, et seq and/or R.C. Sections 3734.20 through 3734.26, for any removal, remedial or corrective actions which are not conducted pursuant to the terms of this Consent Order.

III. JURISDICTION AND VENUE

3. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendants under O.R.C. Chapters 3734., 6111. and 3767. and the rules promulgated thereunder. Venue is proper in this Court.

IV. CLOSURE TRUST FUND

4. Defendant Alvado is enjoined and ordered to, immediately upon entry of this Order, establish and implement a closure Trust Fund described in O.A.C. Rules 3745-55-51, 3745-66-43(A)(1) and 3745-66-45(A)(1). The injunctive requirements for establishing and implementing such a Trust Fund may be satisfied by and may be accomplished by implementing the Agreement attached hereto as Attachment A, which is incorporated by reference as if fully re-written herein. Nothing in this Order, however, shall prevent the Director of Ohio EPA from obtaining access to the funds in the Trust Fund in order to complete closure of the facility in the event Defendant Alvado violates any of the provisions of Sections IV or V of this Order.

V. INJUNCTIVE RELIEF

5. Immediately upon entry of this Order, Defendant Alvado is enjoined and ordered to have paid into the Trust Fund created by Paragraph 4 of this Order, cash in the amount of one hundred sixty eight thousand dollars (\$168,000.00). The cash paid pursuant to this Paragraph 5 shall be used in accordance with, and for the purposes specified in, Attachment A attached hereto.

6. Defendant Alvado is enjoined and ordered to pay into the Trust Fund created by paragraph 4 of this Order a total of \$72,000.00 cash in accordance with the following schedule:

- a.) \$12,000.00 cash on the first business day of the eighth month after the effective date of this Order; and
- b.) \$10,000.00 cash on the first business day of the ninth month after the effective date of this Order, and on the first business day of each month thereafter, until a total of \$72,000.00 cash has been paid into the Trust Fund pursuant to this paragraph 6.

The amount of cash paid into the Trust Fund pursuant to this paragraph 6 may be increased in accordance with paragraph 12 of this Order.

7. Defendant Alvado is enjoined and ordered to submit, within sixty (60) days of entry of this Order, to Ohio EPA an approvable amended closure plan to address closure of the hazardous waste units located at the facility.

8. Upon receipt of the approvable amended closure plan, Ohio EPA shall review the amended closure plan for deficiencies. Upon review, Ohio EPA shall either approve the amended closure plan as a final action without modifications, approve the amended closure plan as a final action with modifications, or issue a notice of deficiencies:

- a.) If Ohio EPA provides Defendant Alvado with written notification of deficiencies in the amended closure plan, Defendant Alvado is enjoined and ordered to submit to Ohio EPA a revised amended closure plan within thirty (30) days of receipt of the notice of deficiencies.
- b.) Following review of the revised amended closure plan, if the revised amended closure plan is not deficient, Ohio EPA may approve the revised amended closure plan

as revised and it shall become the approved closure plan.

- c.) If the revised amended closure plan is deficient, Ohio EPA may modify the plan and approve the revised amended closure plan as modified by Ohio EPA.
- d.) Immediately upon receipt of Ohio EPA's approval of the closure plan eventually approved as a final action by Ohio EPA in accordance with this paragraph number 8, Defendant Alvado is enjoined and ordered to implement the approved closure plan in the manner and pursuant to time frames set forth in the approved closure plan and pursuant to O.A.C. Rule 3745-66-13. The closure plan eventually approved by Ohio EPA shall be incorporated into this Consent Order as if fully rewritten herein.

9. For purposes of paragraph number 8. d.), Defendant Alvado may request, in accordance with O.A.C. Rule 3745-66-13, extensions of time for implementation of his approved closure plan. Nothing in this paragraph number 9, however, shall relieve Defendant Alvado from having to comply with all applicable statutes and regulations in the event such extension request is approved.

10. Nothing contained in this Section V shall prevent Defendant Alvado from exercising any right to appeal in accordance with O.R.C. Section 3745. any final action taken by the Director of Ohio EPA pursuant to this Section V.

11. Defendant Alvado is enjoined and ordered to submit, within sixty days of completion of closure, certification of

closure to Ohio EPA, pursuant to O.A.C. Rule 3745-66-15.

12. If at any time, the funds in the Trust Fund are greater than the amount of funds necessary to complete remaining closure activities in accordance with (1) the most recent closure cost estimate which meets the requirements of O.A.C. Rule 3745-66-42 and which is approved by Ohio EPA and (2) the closure plan and any subsequent amendments to such closure plan approved by Ohio EPA in accordance with Section V of this Order, then Defendant Alvado may apply to the Director of Ohio EPA pursuant to O.A.C. Rule 3745-66-43(A)(7) for a partial release of excess funds from the Trust Fund. If at any time, the funds in the Trust Fund are less than the amount of funds necessary to complete remaining closure activities in accordance with (1) the most recent closure cost estimate which meets the requirements of O.A.C. Rule 3745-66-42 and which is approved by Ohio EPA and (2) the closure plan and any subsequent amendments to such closure plan approved by Ohio EPA in accordance with Section V of this Order, then Defendant Alvado is enjoined and ordered to pay into the Trust Fund on the fifth (5th) business day after receipt of Ohio EPA's approval of the cost estimate the difference between the amount of the funds in the Trust Fund and the amount of the funds necessary to complete closure, after any payments required by paragraph 6 of this Order have been made.

13. Reimbursement for final or partial closure expenditures from the Trust Fund shall be in accordance with O.A.C. Rule 3745-66-43.

VI. PERMANENT INJUNCTION

14. Defendant Alvado is hereby permanently enjoined and ordered to comply with O.R.C. Chapters 3734. and 6111. and the rules promulgated thereunder with respect to those activities that are being conducted by Defendant Alvado, or by persons acting on his behalf, pursuant to this Order or pursuant to the closure plan approved by Ohio EPA in accordance with Section V of this Order; provided, however, that nothing herein shall relieve Defendant Alvado from complying with the applicable financial assurance requirements of O.A.C. Chapters 3745-50 through 3745-69.

VII. CIVIL PENALTY

15. Defendant Alvado is enjoined and ordered to pay within thirty (30) days of entry of this Consent Order a civil penalty totalling ten thousand dollars (\$10,000.00). This civil penalty shall be paid by certified check made payable to "Treasurer, State of Ohio" which check shall be delivered by mail, or otherwise, to Ms. Janis Miller, Administrative Assistant, Environmental Enforcement Section, or her successor, at the Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio. This penalty shall be paid into the Hazardous Waste Clean-Up Fund created by O.R.C. Section 3734.28.

VIII. STIPULATED PENALTIES

16. In the event Defendant Alvado fails to comply with any of the requirements of either this Consent Order or of Attachment A hereto, except for the requirements of paragraph 14 of this Order, Defendant Alvado shall immediately and automatically be in contempt of court and shall also be liable for and shall pay, without demand by the State, stipulated penalties according to the following schedule. For each day of each failure to meet a requirement, up to thirty (30) days - five hundred dollars (\$500.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - one thousand dollars (\$1,000.00) per day. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days, three thousand dollars (\$3,000.00) per day. For each day of each failure to meet a requirement, over ninety (90) days - five thousand dollars (\$5,000.00) per day.

17. Any payment required to be made pursuant to this Section VIII of this Consent Order shall be paid immediately, without demand by the State, by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Ms. Janis Miller, Administrative Assistant, Environmental Enforcement Section, or her successor, at the Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. These penalties shall be paid into the Hazardous Waste Clean-Up Fund created by O.R.C. Section 3734.28.

IX. POTENTIAL FORCE MAJEURE

18. This Section IX applies as a potential defense only for noncompliance with paragraphs 8.a.), 8.d.) and/or 14 of this Consent Order. If any event occurs which causes or may cause a delay of any requirement of only paragraphs 8.a.), 8.d.) and/or 14 of this Consent Order, Defendant Alvado shall notify the Ohio EPA, Division of Hazardous Waste Management, Attn: Manager, Compliance Monitoring and Enforcement Section, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant Alvado to prevent or minimize the delay, and the timetable by which said measures will be implemented. The ten (10) days shall start to run when Defendant Alvado or any of Defendant Alvado's officers, agents, employees, assigns, contractors, consultants or responsible officials either become aware of the event or should have become aware of the event through the exercise of due diligence, job duties, contractual responsibilities or otherwise. Defendant Alvado will adopt all reasonable measures to avoid or minimize any such delay.

19. Upon receipt of the notice referenced in the preceding paragraph 18, Plaintiff may agree to waive or defer one or more of the milestone deadlines herein or the enforcement thereof. Plaintiff, within forty five (45) days thereafter, will inform Defendant Alvado of its decision in writing. Plaintiff is not bound by oral representations of Ohio EPA personnel concerning

the validity of Defendant Alvaro's reason for delay. A decision by Plaintiff to waive or defer any milestone deadline of this Consent Order shall not be a bar to any enforcement action for Defendant Alvaro's failure to meet the date of the milestone as deferred. Such deferred milestone date shall be considered enforceable in place of the date specified in the milestone and shall be subject to the same stipulated penalty provisions as the original milestone date. A decision by Plaintiff to defer enforcement of any milestone deadline or stipulated penalties set forth in this Consent Order shall not constitute a waiver of enforcement action with regard to the terms of this Consent Order, unless the Plaintiff in writing expressly so agrees.

20. In any action by the State of Ohio to enforce any of the provisions of paragraphs 8.a.), 8.d.) and/or 14 of this Consent Order, Defendant Alvaro may raise that he is entitled to a defense that his failure to comply with the applicable requirements of this Consent Order was caused by reasons beyond his control such as, by way of example and not limitation, acts of God, strikes, acts of war, civil disturbances and orders or actions of any court or regulatory agency. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant Alvaro and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an action to enforce the terms of this Consent Order is commenced by Plaintiff. At that time, the burden of proving

that any delay was or will be caused by circumstances beyond the control of Defendant Alvado shall rest with said Defendant. Such burden shall be by a preponderance of the evidence standard. Unanticipated or increased costs in and of themselves associated with the implementation of any action required by this Consent Order shall not constitute circumstances beyond the control of Defendant Alvado or serve as a basis for an extension of time under this Consent Order. Failure by Defendant Alvado to comply with the notice requirements of paragraph 18 shall render this Section IX void and of no force and effect as to the particular incident involved.

X. RETENTION OF JURISDICTION

21. The Court will retain jurisdiction of this action for the purpose of overseeing Defendants' compliance with this Consent Order and O.R.C. Chapters 3734., 6111. and 3767. and the rules adopted thereunder.

XI. INSPECTIONS

22. Defendant Alvado is enjoined and ordered to allow representatives of the Ohio EPA or US EPA, upon proper identification, to enter upon those parts of Defendant's facility over which he has possessory control, i.e. the hazardous waste units subject to closure under Section V of this Order, and to use best efforts to obtain consent to allow

representatives of Ohio EPA or US EPA access to areas over which he does not have possessory control, at any reasonable time to inspect, investigate, take samples and pictures and examine or copy records in order to determine compliance with the terms of this Consent Order and O.R.C. Chapters 3734., 6111., 3767., and the rules promulgated thereunder. Nothing in this Consent Order shall limit the rights of the Ohio EPA or US EPA to conduct regular inspections or investigations pursuant to statute, regulation or permit.

XII. MISCELLANEOUS

23. Nothing contained in this Order shall be construed to be for the benefit of any third party, and this Order shall not be admissible as an admission of law or fact in any proceeding other than one to enforce its terms.

XIII. NOTICE


24. Any submission to the Ohio EPA as required by this Consent Order, unless otherwise indicated, shall be delivered to:

- a. Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: RCRA Group Leader or successor
- b. Director of Ohio EPA
Division of
Hazardous Waste Management
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149
Attn: Manager, Compliance, Monitoring and Enforcement
Section or successor

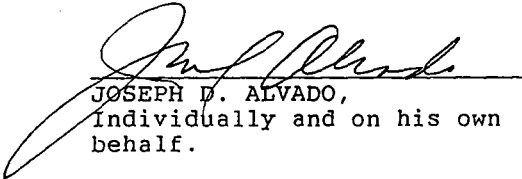
XIV. COURT COSTS

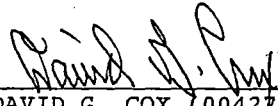
25. The Defendants shall pay the court costs of this action.

ENTERED THIS 14th DAY OF April, 1993.



JUDGE, CUYAHOGA COUNTY COURT OF
COMMON PLEAS


LEE FISHER
ATTORNEY GENERAL OF OHIO

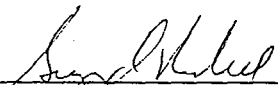

JOSEPH D. ALVADO,
Individually and on his own
behalf.


DAVID G. COX (0042724)
Assistant Attorney General
Environmental Enforcement
Section, 25th Floor
30 E. Broad Street
Columbus, Ohio 43266-0410
Telephone: (614) 466-2766

Counsel for Plaintiff
State of Ohio


MICHAEL A. LAMANNA(0011946)
KAHN, KLEINMAN, YANOWITZ
& ARNSON
The Tower At Erieview
Suite 2600
Cleveland, Ohio 44114-1824
Attorney for Defendant Alvado


JOHN J. GUY
GUY, LAMMERT & TOWNE
2210 First National Tower
Akron, Ohio 44308-1449
Attorney For Defendant Prototype


GREGORY WIDELL
On Behalf of Prototype

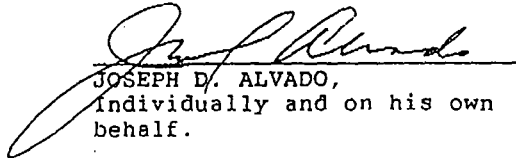
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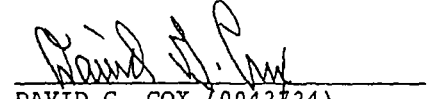
25. The Defendants shall pay the court costs of this action.

ENTERED THIS _____ DAY OF _____, 1993.

JUDGE, CUYAHOGA COUNTY COURT OF COMMON PLEAS

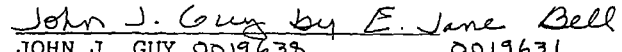
LEE FISHER
ATTORNEY GENERAL OF OHIO

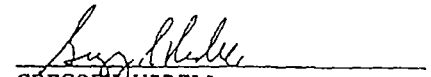

JOSEPH D. ALVADO,
Individually and on his own
behalf.


DAVID G. COX (0042724)
Assistant Attorney General
Environmental Enforcement
Section, 25th Floor
30 E. Broad Street
Columbus, Ohio 43266-0410
Telephone: (614) 466-2766

Counsel for Plaintiff
State of Ohio

MICHAEL A. LAMANNA(0011946)
KAHN, KLEINMAN, YANOWITZ
& ARNSON
The Tower At Erieview
Suite 2600
Cleveland, Ohio 44114-1824
Attorney for Defendant Alvado


JOHN J. GUY 0019638 0019631
GUY, LAMMERT & TOWNE
2210 First National Tower
Akron, Ohio 44308-1449
Attorney For Defendant Prototype


GREGORY WIDELL
On Behalf of Prototype

AFFIDAVIT

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

I, Edward S. Rosenthal, being first duly sworn, do hereby depose and state as follows:

1. I have never been an employee, director, investor, partner, agent, officer, shareholder of Prototype Development, Inc. or any other person or entity acting in concert with Prototype Development, Inc.

2. I have never been involved, directly or indirectly, either on my own behalf or through another person(s) acting on my behalf, with the operation of the business of Prototype Development, Inc. at 7750 Hub Parkway, Valley View, Ohio.

FURTHER AFFIANT SAYETH NAUGHT


Edward S. Rosenthal

Sworn to me and subscribed before me this 19 day of March, 1993.


Notary Public

THOMAS K. BUCKLEY
Notary Public STATE OF OHIO
My commission expires March 2, 1997
(Recorded in Cuyahoga County)

AFFIDAVIT

STATE OF Ohio)
COUNTY OF Cuyahoga) SS:

I, Edward A. Kaplan, being first duly sworn, do hereby depose and state as follows:

1. I have never been an employee, director, investor, partner, agent, officer, shareholder of Prototype Development, Inc. or any other person or entity acting in concert with Prototype Development, Inc.

2. Except for Accounting Services conducted on a consulting basis for the period November, 1992 through the present, I have never been involved, directly or indirectly, either on my own behalf or through another person(s) acting on my behalf, with the operation of the business of Prototype Development, Inc. at 7750 Hub Parkway, Valley View, Ohio.

FURTHER AFFIANT SAYETH NAUGHT

Edward A. Kaplan
Edward A. Kaplan

Sworn to me and subscribed before me this 23RD day of March, 1993.

Jeffrey A. Thomas
Notary Public

JEFFREY A. THOMAS
Notary Public, State of Ohio
My Commission Expires July 18, 1993
(Recorded in Cuyahoga County)

Attachment A

This "Agreement" is entered into as of this 25 day of March, 1993, by and between Joseph Alvado the "Grantor", and Bank One Ohio Trust Company NA, the "Trustee".

WHEREAS, the Ohio Environmental Protection Agency, "Ohio EPA", has established certain rules applicable to the Grantor requiring that as the owner of a hazardous waste management facility, Grantor must provide assurance that funds will be available when needed for closure and/or post-closure care of the facility, and

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein, and

WHEREAS, the Grantor has entered into a separate agreement which describes how funds remaining in the trust fund, after either certification of clean closure in accordance with O.A.C. Rule 3745-66-15 has been received and acknowledged in writing by the Director, or after submittal of a separate document demonstrating financial assurance for post-closure care, may be disbursed to Continental Title Agency Corporation ("Escrow Agent"), and

WHEREAS, nothing in this Agreement relieves the Grantor from having to provide financial assurance for other than a clean closure or for post-closure care of the facility in accordance with applicable rules established by Ohio EPA, and

WHEREAS, the Grantor has selected the Trustee to be the

Trustee under this Agreement, and the Trustee is willing to act as Trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

- (a) The term "Grantor" means Joseph Alvado and his successors or assigns.
- (b) The term "Trustee" means Bank One Ohio Trust Company N.A., and any successor Trustee.
- (c) The term "Director" means the Director of the Ohio EPA, or the Director's designee.
- (d) The terms "closure cost estimate" and "post-closure cost estimate" means those terms as defined in O.A.C. Rules 3745-66-41, 3745-66-42 and 3745-66-44, respectively.
- (e) The term "clean closure" means any method of closing that is not subject to the post-closure requirements of O.A.C. Rules 3745-55-17, -18, -20, -44, -45, 3745-66-17, -18, -19, -20, -44 and -45.

SECTION 2. IDENTIFICATION OF FACILITY AND COST ESTIMATES

This Agreement pertains to the facility formerly identified as PDI Inc., located at 7750 Hub Parkway, Cleveland, Ohio U.S. EPA Identification No. OHD 004229639 ("facility") and to the closure and/or post-closure cost estimates for the facility, currently estimated at \$168,000.00 for clean closure only.

SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund ("Fund") for the sole benefit of the Ohio EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein expressly provided. The Fund is established initially as consisting of 168,000.00 cash, which is acceptable to the Trustee. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon and any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, in trust, as

hereinafter, provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Director.

SECTION 4. PAYMENT FOR CLOSURE AND POST-CLOSURE CARE

The Trustee will make all payments from the Fund as the Director will direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facility covered by this Agreement. Such costs shall include costs associated with closure incurred after the effective date of this Agreement, including engineering and consulting fees. The Trustee will reimburse the Grantor or other persons, as specified by the Director, from the Fund, for closure and post-closure expenditures in such amounts as the Director will direct in writing. Upon certification of clean closure of the facility in accordance with O.A.C. Rule 3745-66-15 or submittal of a separate document demonstrating financial assurance for post-closure care, any amount remaining in the Fund will be refunded to the Escrow Agent as the Director specifies in writing and in accordance with O.A.C. Rule 3745-66-43(H). Upon refund, such amounts will no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISING THE FUND

Payments made to the Trustee for the Fund will consist of cash or securities acceptable to the trustee.

SECTION 6. TRUSTEE MANAGEMENT

The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee will discharge its duties with respect to the Fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantor or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as

amended, 15 USC 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the Federal or a State government; and

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited

therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State Government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

SECTION 9. TAXES AND ADMINISTRATIVE EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund will be paid from the Fund. All other reasonable expenses incurred by the Trustee in connection with the administration of this Fund, and all other proper charges and disbursements of the Trustee for expenses related to administration of the Fund, will be paid from the Fund.

SECTION 10. QUARTERLY VALUATION

The Trustee will quarterly furnish to the Grantor and to the Director a statement confirming the value of the Fund. Any securities in the fund will be valued at market value as of no more than sixty days prior to each quarter following the effective date of this Agreement. The failure of the Grantor to object in writing to the Trustee within ninety days after the statement has been furnished to the Grantor and the Director will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with outside counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of outside counsel. Payment for services rendered by outside counsel to the Trustee will be provided by the Grantor.

SECTION 12. TRUSTEE COMPENSATION

The Trustee will be entitled to reasonable compensation from

the Grantor for the Trustee's services as agreed upon from time to time in writing with the Grantor.

SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee will have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee will assign, transfer and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to the Court having jurisdiction over Case No. _____, Cuyahoga County Court of Common Pleas, for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the Fund in a writing sent to the Grantor, the Director, and the present Trustee by certified mail ten days before such change becomes effective. Any administrative expenses incurred by the Trustee, but not including Trustee compensation or payment for services rendered by outside counsel, as a result of any of the acts contemplated by this Section will be paid as provided in Section 9.

SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Director to the Trustee will be in writing, signed by the Director, and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Director except as provided for herein.

SECTION 15. NOTICE TO DIRECTOR

The Trustee shall notify the Director, by certified mail within two business days of the first business day of the month, if: the minimum monthly deposits as required by Section 5 have not been made into the Fund by the Grantor; if the Trustee resigns; if the Grantor ceases to exist, files for bankruptcy, defaults or violates any of the terms of this Agreement; or if the Grantor replaces the Trustee.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director and in the event the Grantor defaults or violates any of the terms of this Agreement, ceases to exist or files for bankruptcy, by an instrument in writing executed by the Trustee and the Director.

SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Fund will be irrevocable and will continue until terminated by the mutual, written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and Director if the Grantor ceases to exist or files for bankruptcy. Upon termination of the Fund, all funds remaining in the Fund, less final trust administration expenses, will be delivered to the Escrow Agent.

SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Fund, or in carrying out any directions by the Grantor or the Director issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Fund or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

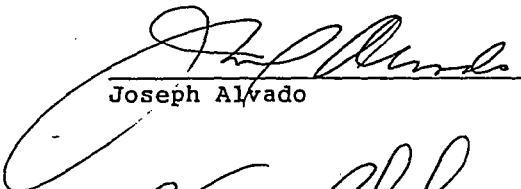
SECTION 19. CHOICE OF LAW

This Agreement will be administered, construed and enforced according to the laws of the state of Ohio.


SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement will not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective persons and/or officers duly authorized and their respective corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is substantially identical to the wording specified in paragraph (A)(1) of rule 3745-55-51 of the Ohio Administrative Code as such regulations were constituted on the date first above written.



Joseph Alvado



Authorized Representative
of Trustee, Bank One Ohio Trust Company N.A.

Notary Public

Exhibit A To The
Escrow Account Agreement

The person authorized to give written orders, requests and
instructions to the Trustee is Joseph Alvado.

Date March 25, 1995

2182E.80-88

EXHIBIT "B"

Facility Information

- (a) Name and address of Facility: PDI, 7750 Hub Parkway, Cleveland, Ohio 44125
- (b) United States EPA Identification Number: OHD 00 422 9639 *
- (c) Ohio Permit Number: N/A
- (d) Current closure and/or post-closure cost estimates or portions thereof: \$168,000

EXHIBIT "C"

Property being delivered to the Trustee to establish the Trust:

\$168,000 cash, paid by check and/or wire transfer