

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

DIVERSIFIED PRODUCTS CORP.  
WILLIAMSON AVENUE FACILITY  
OPELIKA, ALABAMA

ORDER NO. 90-156-WP

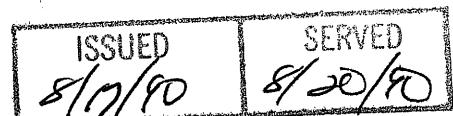
FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 through 22-22A-16 (1984 and 1989 Cum. Supp.), the Alabama Water Pollution Control Act, Ala. Code §§22-22-1 through 22-22-14 (1984 and 1989 Cum. Supp.), and §307 of the Federal Water Pollution Control Act, 33 U.S.C. §1317, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS OF FACT:

1. Diversified Products Corporation (hereinafter "the Permittee") operates a facility for the manufacture of physical fitness equipment located in Opelika, Alabama.

2. The Permittee was issued a State Indirect Discharge (hereinafter "SID") permit by the Department authorizing the discharge of pollutants and other waste into Sougahatchee Creek, a water of the state, through the Opelika Westside Wastewater Treatment Plant, subject to certain terms, limitations and conditions.

3. Among the terms, limitations and conditions contained in said permit are daily maximum and daily average discharge limitations for total suspended solids (TSS), oil and



grease (O&G), phosphates (PO4-P) and total lead (Pb,T) and daily minimum and daily maximum discharge limitations for pH. Said discharge limitations are as follows:

	pH (s.u.)	TSS (mg/l)	O&G (mg/l)	PO4-P (mg/l)	Pb,T (mg/l)
Minimum	6.0	N/A	N/A	N/A	N/A
Maximum	9.0	100	40.0	20	0.2
Average	N/A	50	20.0	10	0.1

4. On March 7, 1989 the Department issued Administrative Order No. 89-055-WP to the Permittee citing 187 violations of the discharge limitations of its SID permit. Said order required the Permittee to achieve compliance with the terms, limitations and conditions of its SID permit no later than September 28, 1989.

5. On September 8, 1989 the Permittee and the Department, through their attorneys of record, filed a Joint Motion for Entry of Consent Order with the Circuit Court of Lee County, Alabama in Alabama Department of Environmental Management v. Diversified Products Corporation, et al., CV-88-361, which was granted by the Circuit Court on September 11, 1989. Said Order extended the September 28, 1989 compliance date in Order No. 89-055-WP to October 28, 1989.

6. The Permittee has violated the requirements of Administrative Order No. 89-055-WP, the Consent Order in Alabama Department of Environmental Management v. Diversified Products, Corporation, et al., CV-88-361, and the discharge limitations of its SID permit as follows:

<u>Date</u>	<u>pH</u> <u>(s.u.)</u>	<u>TSS</u> <u>(mg/l)</u>	<u>PO4-P</u> <u>(mg/l)</u>	<u>Fe,T</u> <u>(mg/l)</u>	<u>O&amp;G</u> <u>(mg/l)</u>
11/3/89		109			
11/9/89	9.8				47
11/29/89		258		74.8	
11/89 Avg.		103.2		15.3	24.2
12/6/89		104			57
12/13/89		143			268
12/19/89					41
12/89 Avg.		93			122
1/4/90					51
1/10/90					64
1/17/90	10.0				
1/24/90			40.5		71
1/31/90					107.6
1/90 Avg.		57	17.2		64.9
2/7/90			78.2		23
2/15/90			68		
2/21/90					80
2/28/90					27
2/90 Avg.			40.5		36.5
3/7/90			20.8		
3/15/90			90		
3/21/90		145			42
3/90 Avg.			33.7		21.4

7. The Permittee has alleged that it does not have the ability to pay a civil penalty, and that documentation of said inability to pay will not be available to the Department for consideration until October 1, 1990.

8. The Permittee has taken steps to minimize or mitigate the effects of the violations upon the environment, but those steps have not resulted in compliance.

#### ORDER

Based upon the foregoing FINDINGS OF FACT and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(18)(a), 22-22-9(i), and 22-22-9(k) (1984 and 1989 Cum. Supp.) and §307 of the Federal Water Pollution Control Act, 33 U.S.C. §1317, it is hereby ORDERED:

A. That not later than January 1, 1991 the Permittee shall submit to the Department final design plans for improvements to its wastewater treatment system adequate to achieve and maintain compliance with the terms, limitations and conditions of its SID permit. Said plans shall be prepared by a registered professional engineer licensed to practice in Alabama and shall be prepared in accordance with ADEM Admin. Code Chap. 335-6-3.

B. That not later than January 1, 1991 the Permittee shall have completed the improvements to its wastewater treatment system designated in its design plan required by paragraph A above.

C. That not later than March 1, 1991 the Permittee shall have achieved compliance with the terms, conditions and limitations of its SID permit and shall continuously maintain such compliance each and every day thereafter until the expiration of said SID permit.

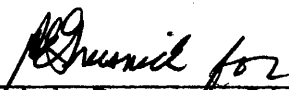
D. That not later than October 15, 1990, the Permittee shall submit to the Department any verified financial information it wishes considered in determining the appropriate penalty for the violations contained herein. If such information is submitted to the Department, it will be considered in determining an appropriate penalty for the violations cited herein, and a separate administrative order assessing said civil penalty will be issued. If no verified

financial information is submitted to the Department by October 15, 1990, the Department will issue an administrative order assessing a civil penalty for the violations cited herein without consideration of the Permittee's ability to pay said penalty.

E. That the failure of the Permittee to comply with any of the provisions of this Order or of the Permittee's SID permit shall constitute cause for the revocation of the Permittee's SID permit and/or for commencement of legal or other appropriate enforcement action for the recovery of civil penalties, criminal fines or other appropriate relief by the Department against the Permittee.

F. That the issuance of this Order does not preclude the commencement of legal action for the recovery of criminal fines or other appropriate relief for the violations cited herein by the Department against the Permittee.

ORDERED and ISSUED this 17<sup>th</sup> day of August, 1990.

  
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Leigh Pegues, Director  
Alabama Department of  
Environmental Management  
1751 Cong. W.L. Dickinson Drive  
Montgomery, Alabama 36130  
(205) 271-7700

CERTIFICATE OF SERVICE

I, Olivia H. Jenkins, hereby certify that I have served Order Numbers 90-155-WP and 90-156-WP upon Diversified Products Corporation by sending the same postage paid, through the U.S. Mail, as Certified Mail No. P 506 631 935, with instructions to forward and return receipt requested to:

Susan Shirock DePaola and  
Jimmy Samford  
Samford & DePaola, P.C.  
Colonial Financial Center  
One Commerce Street, Suite 601  
Montgomery, Alabama 36104

DONE this 17<sup>th</sup> day of August, 1990.

  
Olivia H. Jenkins