



State of Ohio Environmental Protection Agency

Southeast District Office

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Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

August 7, 2007

RE: ~~PIKE COUNTY~~
~~SITE-MILLER SALVAGE~~

Miller Land Company, an Ohio Corp.
Attn.: Robert Miller
P.O. Box #160
Latham, Ohio 45646

FAX AND CERTIFIED MAIL
#7006 0100 0003 5620 2587

RE: Inspections of Lapparell Road Site
-NOTICE OF VIOLATION-

Dear Mr. Miller:

In January 2007, this office became aware that on or about March 13, 2006, Mr. Fred Miller transferred parcel #12097700 in Pike County from himself to Miller Land Company. Neither Fred Miller nor Miller Land Company advised Ohio EPA of the property transfer. This property contains portions of the Miller Salvage facility and previously identified wood waste and water pollution sources. Seeps identified as sources of pollution discharges to Kincaid Creek and remnants of the old wood waste pile operated by Miller Lumber Company in the 1990's are both present on this property. The parcel also contains portions of the leachate collection pond and the wood waste pile currently associated with the current Miller Salvage operation. As the owner, Miller Land Company is and has been subject to obligations for this site under Ohio Law and Rules and court orders.

The Miller site has been under orders with the Ohio Environmental Protection Agency (Ohio EPA). Both the Agreed Judgement Entry Resolving the State's Motion for Preliminary Injunction (AJPI) that was filed with Pike County Court on April 15, 2005, and the Consent Order Preliminary Injunction (COPI) that was filed with the Pike County Court on November 28, 2001, address operational aspects and ongoing unauthorized pollution associated with the site. Both of the orders specify that "the provisions of the (Agreed Entry and COPI) shall apply to and be binding upon the parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and other persons in active concert or participation with them who receive actual notice of this (Agreed Entry and COPI) whether by personal service or otherwise." With the purchase of the above referenced property, Miller Land Company became party and subject to the Orders.

On May 8, 2007, and on two subsequent dates, I inspected the wood waste site located at 1617 Lapparell Road, Latham, Ohio. The site received wood waste generated by and shipped exclusively from the Mill's Pride cabinet plant in Waverly, Ohio. This letter documents my inspections of the site from the period May 8, 2007 - July 23, 2007. The purpose of my inspections was to evaluate your compliance with the AJPI, the COPI, Director's Final Findings and Orders (DFFO's) issued on September 16, 1994, special solid waste conditions incorporated into Surface Water Permit-To-Install (PTI) #06-4142, issued on July 19, 1995, Ohio Administrative Code (OAC) Chapter 3745-27, and Ohio Revised Code (ORC) 3734 and 6111.

Permit to install (PTI) # 06-7609 authorized the construction of the new leachate collection pond. This pond was constructed in the fall of 2005 and replaced the original pond that was found to be discharging leachate into the ground water at the site. It was placed into service on or about December 1, 2005. The new leachate collection pond includes a plastic liner and has a maximum design capacity of 1.9 million gallons at 8.5 feet of depth. The normal design

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capacity of the pond was to be no more than approximately 800,000 gallons at roughly 3.5 feet of depth. The design also provides for the pond to have 2 feet of available freeboard (from 8.5 to 10.5 feet) above the maximum design capacity. There is no permit or authorization for the pond or the site to discharge any leachate.

SUMMARY OF PREVIOUS SITE CONDITIONS

As described in previous letters, the buildup of excess leachate on site began to manifest itself beginning last summer and early fall. By October 2006, leachate levels within the leachate collection pond exceeded the maximum design capacity and minimum allowable freeboard levels, despite increased recirculation rates back onto the wood waste pile. Over time, conditions continued to worsen as more and more leachate accumulated on site, leading to leachate outbreaks and releases to the environment, as well as the prohibited storage of millions of gallons of leachate on top of the wood waste pile. Records from the Huntington Sewer District indicate that Fred Miller and Miller Salvage's total amount of leachate removed and disposed of was about 25 truck loads totaling approximately 150,000 gallons of leachate. This occurred from December 2006 through January 2007. No land application of leachate is documented to have taken place.

On February 1, 2007, Mill's Pride took steps to begin removing leachate for disposal. Mill's Pride's efforts to remove and dispose of leachate were hampered by inclement weather through the first half of February, but as weather conditions improved, so did the removal rates. The recirculation pumps and guns that sprayed leachate back onto the pile were gradually turned off as leachate was removed from the system. This allowed the impoundments of leachate to begin to recede. By late March 2007, the last leachate impoundments receded on the pile. Leachate had been impounded on top of the wood waste pile from November 1, 2006, through March 26, 2007, resulting in continuous violations during the period.

Accumulated leachate stored within the wood waste pile continues to discharge and Mill's Pride continues hauling and disposing of leachate. As of August 4, 2007, Mill's Pride hauled and disposed of approximately 8,949,650 gallons.

OBSERVATIONS BY DATE

Inspections and observations during the period were made on the following dates: May 8, June 14, and July 23, 2007. I was accompanied by Sandy Colegrove of the Pike County General Health Department (PCGHD) on May 8 and June 14, 2007. This letter documents conditions during this time frame and your compliance with the above-referenced orders and rules.

On May 8, 2007, I inspected the site. The level in the leachate collection pond was 5.75 feet. I observed that the old leachate pond was still in existence. No new efforts appeared to have been made to remove any of the remaining wood waste still located in the old foot print area. Large barren areas still existed in the old footprint area. The seeps located south and west of the old foot print area along the eastern bank of Kincaid Creek continued to discharge reddish brown water into Kincaid Creek. Previous samplings of these seeps revealed them to contain leachate constituents. Ohio EPA has not received any final certification of construction of the leachate collection pond, nor any monthly shipping reports on wood waste received and shipped since October 2006. No wood waste was removed from the site during any of the site visits documented in this letter. All of these conditions resulted in continuous violations as detailed below.

On June 14, 2007, I inspected the site and found no significant change in conditions, except that the recirculation pumps, hoses, guns, and the electrical panel had been removed from the site. This occurred on or about May 18, 2007. The level in the leachate collection pond was

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about 4 feet. I observed that the old leachate pond was still in existence. No new efforts appeared to have been made to remove any of the remaining wood waste still located in the old foot print area. Large barren areas still existed in the old footprint area. The seeps located south and west of the old foot print area along the eastern bank of Kincaid Creek continued to discharge reddish brown water into Kincaid Creek. Previous samplings of these seeps revealed them to contain leachate constituents.

On July 23, 2007, I inspected the site and found no significant change in conditions, except that there was some evidence of an attempt to seed the barren area of the old footprint. Sparse grass about 2-3" high was observed growing in rows in some of the barren areas. Large barren areas still existed in the old footprint area. The level in the leachate collection pond was 5.0 feet. I observed that the old leachate pond was still in existence. No new efforts appeared to have been made to remove any of the remaining wood waste still located in the old foot print area. The seeps located south and west of the old foot print area along the eastern bank of Kincaid Creek continued to discharge reddish brown water into Kincaid Creek. Previous samplings of these seeps revealed them to contain leachate constituents.

Based upon my observations, you are in violation of the following:

AJPI PARAGRAPH 5E, FILED APRIL 15, 2006

Within thirty (30) days after completion of the new leachate collection pond, Defendants shall remove and properly dispose, land apply, or treat all remaining accumulated leachate, solid waste, and sediments from the existing pond. Within seven (7) days of the removal of all solid waste and leachate from the old pond, either 1) remove the existing pond, or 2) repair and reline the existing pond in accordance with the standards set forth in PTI Application number 06-4142 to use as a back up to the new pond.

As noted above, the new leachate collection pond was placed into service on or about December 1, 2005. No efforts were since made to remove the existing accumulated solid waste and sediment, nor was the pond ever removed or properly restored. Ample evidence has been previously provided that this pond's liner is damaged and that storing of leachate in the pond provides a direct conduit for leachate to contaminate groundwater, and subsequently impact Kincaid Creek, Kincaid Spring, and Kincaid State Fish Hatchery. You have been and continue to be in violation of this requirement since approximately March 13, 2006, the date you acquired the property. Immediately remove all accumulated leachate, solid waste and sediment from the old pond for proper disposal and remove the old pond per the court order.

ORC 6111.04

No person shall cause pollution or place or cause to be placed any... wastes in a location where they cause pollution of any waters of the state.

As noted above, seeps that contain leachate from the site exist along the eastern bank of Kincaid Creek. One of the primary means by which leachate from the site reaches these seeps is by:

Leaking through the damaged liner of the old pond, into the sand and gravel below. It then migrates laterally to the seeps along the stream bank. A plume of contaminated groundwater has been documented to exist from the pond and waste pile to Kincaid Creek.

You have been in continuous violation of this regulation since acquiring this property.

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AJPI PARAGRAPH 5F, FILED APRIL 15, 2005

Within three (3) months after the effective date of this Order, and every three (3) months thereafter, Defendants shall cause the removal of at least 9,000 tons of wood waste material from the new wood waste pile.

As per the terms of Paragraph 5f of the November 28, 2001 COPI, Miller Salvage must submit monthly records that report the amount of waste drawn down from the site. This office has not received monthly drawdown reports since October 2006. Miller Salvage and Fred Miller's failure to submit monthly draw down reports along with no observed removal of wood waste in the past nine months show that no wood waste has been removed by Miller Salvage from the site since at least October 15, 2006. The drawdown schedule has not been met.

AJPI, PARAGRAPH 5C, FILED APRIL 15, 2005 - (relevant to new leachate collection pond)

Within thirty (30) days after completion of the new leachate collection pond, Defendants shall submit to Ohio EPA SEDO a construction certification report, prepared by an independent professional engineer registered in Ohio, certifying that the pond was constructed in accordance with the approved PTI.

The new leachate collection pond construction was completed and placed into operation on or around December 1, 2005. The deadline for the submittal of the required certification report was approximately January 1, 2006. To date, Ohio EPA SEDO has not received any such report. Immediately retain the services of an independent professional engineer, registered in the state of Ohio, to complete a construction certification report for the new leachate collection pond.

AJPI PARAGRAPH 5L, FILED APRIL 15, 2005

Within one hundred eighty (180) days after the effective date of this Order, the Defendant shall completely remove all remaining wood waste material from the old footprint located between the new wood waste stockpile and Kincaid Creek.

This order required that all remaining wood waste from the old footprint area be completely removed by no later than October 12, 2005. As noted above, discreet areas of residual wood waste material remains on site. Leachate from this waste material discharges into Kincaid Creek. All additional remaining waste must be removed immediately.

and

COPI, PARAGRAPH 5Q, FILED NOVEMBER 28, 2001

Immediately remediate areas previously occupied by unpermitted storage piles by removing residual debris and restoring a dense vegetative cover.

As noted above, most of the entire field is currently barren. Although it appears the area was seeded with a drill sometime this summer, no mulch was applied and new growth is minimal. Areas of residual wood waste remains. The remaining wood waste must be removed and steps taken to revegetate the field.

and

SPECIAL TERMS AND CONDITIONS, PARAGRAPH 3 OF PTI #06-4142 ISSUED JULY 19, 1995

Within two hundred and seventy days (270) of the effective date of this permit, *any waste stored outside the areas specified in the approved plans for storage piles* shall either 1) be moved to within the areas specified within the approved plans to ensure runoff from the storage piles is collected and contained in the surface water collection

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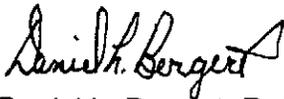
system and the collection ponds, or 2) be removed to a licensed solid waste disposal or transfer facility, a properly authorized location for land application or beneficial use, or a resource recovery facility.

This condition required that the old storage pile be completely removed by no later than April 14, 1996. As noted above, discreet pockets of residual wood waste material remains on site. Leachate from this waste material discharges into Kincaid Creek. All additional remaining waste must be removed immediately.

Failure to list specific deficiencies in this communication does not relieve you from the responsibility of complying with all applicable environmental regulations. This letter does not relieve you from liability for any past or present violations of the state's environmental laws.

Please provide a written response within 10 days detailing your actions taken to correct the violations noted within this letter. The seriousness and severity of the ongoing violations at your facility continue to be of great concern to the Agency. Please contact me at 740-380-5438 if you have any questions.

Sincerely,



Daniel L. Bergert, R. S.
Environmental Specialist II
Division of Solid and Infectious Waste Management

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cc: Carl Mussenden, DSIWM-CO
George Horvath, Assistant Attorney General
Sandy Colegrove, Pike County Health Department
Fred Miller, Miller Salvage, Inc.