



State of Ohio Environmental Protection Agency

Southeast District Office

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

May 1, 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 3450 0001 9054 5294**

**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, Miller Land Company purchased parcel #12097700 in Pike County from Mr. Fred Miller. 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.

Since January 17, 2007, personnel from Ohio EPA and/or Pike County General Health District (PCGHD) have inspected the wood waste site located at 1617 Lapparell Road, Latham, Ohio, on multiple occasions. The site received wood waste generated by and shipped exclusively from the Mill's Pride cabinet plant in Waverly, Ohio. Inspections were performed on various dates by Sandy Colegrove, Matt Fout, Patrick Hudnall, Maria Galanti, Aaron Wolfe, Jack Knapp, and Dan Bergert. The purpose of our 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. This letter serves to address observations and your compliance status from January 19 - through April 27, 2007.

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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 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.

The approved PTI included a design for operation of one pump (with a redundant backup pump), located and operated in the pump vault, to be pumped for recirculation through one water line to the pile to one irrigation spray gun. As discussed further below, the facility has not been operated in accordance with the approved plans or the AJPI. A second pump and gun, and later a third pump and gun, were installed to increase the rate at which leachate could be sprayed back onto the pile. The leachate should have been removed off site for proper disposal in sufficient quantities to maintain the normal design capacity of approximately 800,000 gallons. The relocation of the existing pumps and installation of the two additional pumps and guns constitute a modification to the treatment system which required approval from the director of the Ohio EPA, per OAC 3745-42-02. No such approval was requested or granted.

OBSERVATIONS BY DATE:

Inspections and observations during the period were made on the following dates: January 19, 20, 21, 22, 24, 25, 26, 28, 29, 30, February 1, 6, 9, 10, 12, 13, 15, 22, 23, 24, 26, 27, 28, March 5, 6, 8, 12, 22, 26, April 2, 9, 10, 19, and 27, 2007. During the period February 1, 2007, through April 27, 2007, Mill's Pride hauled and disposed of 1,017 truck loads totaling approximately 6,331,350 gallons of leachate. 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 in December 2006 through January 2007.

Since many of the site conditions are redundant, this letter will provide detailed descriptions of only those observations relevant to changes in site conditions during the period.

On January 20, 2007, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 9.2 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 1.3 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at that time. Leachate continued to be impounded on top of the wood waste pile in large volumes. Leachate continued to be stored in the old leachate pond.

Observations of levels in the leachate collection pond continued to indicate the level exceeded the 8.5 foot mark from January 20, 2007, through February 6, 2007. This corresponds to a continuous violation of less than two feet of freeboard for the period from January 17, 2007 (previously reported at 9.55 feet) through February 6, 2007.

On February 1, 2007, Mill's Pride took steps to begin removing leachate for disposal. One tanker truck was loaded and sent 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.

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On March 26, 2007, Dan Bergert inspected the site and observed the last leachate impoundments receding on the pile. Leachate had been impounded in the wood waste on the pile since the period began through March 26, 2007, resulting in continuous violations.

On April 19, 2007, Dan Bergert inspected the site and 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. 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. Miller Salvage did not remove wood waste from the site during any of the 34 site visits documented in this letter. All of these conditions resulted in continuous violations as detailed below.

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

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

Defendants shall maintain at least two (2) feet of freeboard space in the new leachate pond. Defendants shall immediately commence proper removal of leachate for authorized land application, treatment, or permitted disposal should the freeboard become less than two (2) feet in the new pond.

The observations indicate that the 8.5 feet depth design capacity continued to be exceeded on January 17, 2007 (see previous notice of violation) through February 6, 2007. The purpose of this requirement is to help protect the integrity of the pond and prevent any unauthorized release of leachate to the environment. Past releases from the site have been demonstrated to have impacted ground water, surface water in Kincaid Creek, Kincaid Spring, and consequently, operations at the Kincaid Fish Hatchery.

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. The deadline for the removal and proper disposal of the pond's contents was approximately January 1, 2006. 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, your purchase date of 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.

AJPI PARAGRAPH 5M, FILED APRIL 15, 2005

Defendants are prohibited from constructing and/or using impoundments in the waste pile for purposes of storing leachate.

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As noted above, throughout the period in question, you have actively used constructed berms of wood waste around each of the recirculation spray guns to impound leachate on the top of the pile. You were in violation of this requirement throughout the period from January 17, 2007 (see previous notice of violation) through March 26, 2007.

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 your purchase of this property.

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 six 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

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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, the entire field is currently barren and no steps have been taken to reestablish a vegetative cover. 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

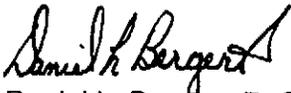
Within two hundred and seventy days (270) of the effective date of this permit, *any waste stored outside the areas specified in the approved plans for storage piles* shall either 1) be moved to within the areas specified within the approved plans to ensure runoff from the storage piles is collected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

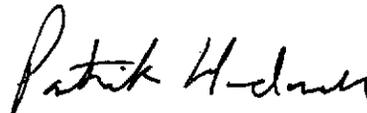
Failure to list specific deficiencies in this communication does not relieve you from the responsibility of complying with all applicable environmental regulations. This letter does not relieve you from liability for any past or present violations of the state's environmental laws.

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



Patrick Hudnall
Environmental Specialist II
Division of Surface Water

DLB/PH/jg

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

