



State of Ohio Environmental Protection Agency

Southeast District Office

2195 Front Street
Logan, Ohio 43138

TELE: (740) 385-8501 FAX: (740) 385-6490
www.epa.state.oh.us

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Laura H. Powell, Acting Director

January 26, 2007

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

Miller Land Company, an Ohio Corp.
Attn.: Robert Miller
P.O. Box #160
Latham, Ohio 45656

**FAX AND CERTIFIED MAIL
#7006 0100 0003 5620 2570**

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

Dear Mr. Miller:

On November 29, 2006, and on several subsequent dates, Dan Bergert (SEDO-DSIWM) 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. Other inspections were performed by Patrick Hudnall (SEDO-DSW). This letter documents the inspections of the above referenced site from the period November 28, 2006 - January 17, 2007. The purpose of the inspections was to evaluate your compliance with the Temporary Restraining Order (TRO) that was filed with Pike County Court on November 14, 2006, the Agreed Judgement Entry Resolving the State's Motion for Preliminary Injunction (AJPI) that was filed with Pike County Court on April 15, 2005, the Consent Order Preliminary Injunction (COPI) that was filed with the Pike County Court on November 28, 2001, Director's Final Findings and Orders (DFFO's) issued on September 16, 1994, special solid waste conditions incorporated into your Surface Water Permit-To-Install (PTI), 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 only observations and compliance status associated with the management of the leachate collection pond. Other issues associated with the site will be addressed in a separate letter.

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 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:

On November 29, 2006, Dan Bergert, accompanied by Sandy Colegrove, of the Pike County General Health District (PCGHD), inspected the site and observed the level in the leachate collection pond was approximately 8.38 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.12 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate was impounded on top of the wood waste pile. A gasoline pump was in operation pumping leachate from the old pond into the ring ditch to flow back to the leachate collection pond. There appeared to be slightly under 1 foot of freeboard in the old pond. Leachate was observed continuing to seep out of the western dam outslope of the old pond.

We also observed a used tanker trailer that had been recently purchased was parked at the Miller Salvage garage. Miller Salvage employees were removing the decals from the trailer.

On November 30, 2006, Pat Hudnall inspected the site and observed the level in the leachate collection pond was approximately 8.5 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.0 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond.

The tanker trailer was reportedly being cleaned in preparation for hauling leachate.

On December 1, 2006, Pat Hudnall inspected the site and observed the level in the leachate collection pond was approximately 8.5 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.0 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond.

On December 2, 2006, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 8.6 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 1.9 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond.

On December 5, 2006, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 8.6 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 1.9 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond. It was observed that the southwestern corner of the wood waste pile experienced a slope failure. The waste in this area appeared to have partially liquified and flowed towards and into the ring collection ditch. The ring ditch and the entire surrounding area had been recently reworked by Miller Salvage employees.

On December 6, 2006, Pat Hudnall inspected the site and observed the level in the leachate collection pond was just under 8.5 feet according to the gauge mounted on the inslope of the pond. This corresponds to just over 2.0 feet of available freeboard. Three pumps were in operation

**LETTER TO: MILLER LAND COMPANY
INSPECTIONS
JANUARY 26, 2007
PAGE 3 OF 8**

recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond.

Miller Salvage employees were observed preparing a means to load out leachate into the tanker truck.

On December 7, 2006, Pat Hudnall inspected the site and observed the level in the leachate collection pond was just under 8.25 feet according to the gauge mounted on the inslope of the pond. This corresponds to just over 2.25 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond.

On December 8, 2006, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 8.38 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.12 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond.

On December 7, 2006, Pat Hudnall inspected the site and observed the level in the leachate collection pond was just under 8.25 feet according to the gauge mounted on the inslope of the pond. This corresponds to just over 2.25 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond.

On December 10, 2006, Pat Hudnall inspected the site and observed the level in the leachate collection pond was approximately 8.38 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.12 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond. It appeared that a leachate loadout structure had been constructed just south of the sediment collection basins in order to load the tank truck.

On December 11, 2006, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 8.25 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.25 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond. The seeps along the eastern bank of Kincaid Creek were observed and continued to be discharging leachate into the stream.

On December 14, 2006, Pat Hudnall inspected the site and observed the level in the leachate collection pond was approximately 8.4 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.1 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond. It was observed that Miller Salvage employees were attempting to solidify leachate on the pile with some of the drier wood waste material, and then push the saturated waste off to

**LETTER TO: MILLER LAND COMPANY
INSPECTIONS
JANUARY 26, 2007
PAGE 4 OF 8**

the east to allow the action to be repeated. The impoundments immediately began to reform around the spray guns.

On December 16, 2006, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 8.38 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.12 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond.

On December 18, 2006, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 8.0 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.5 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be slightly over 1 foot of freeboard in the old pond.

On December 20, 2006, Pat Hudnall, accompanied by Tim Campbell and Aaron Wolfe of this office, inspected the site and observed the level in the leachate collection pond was approximately 7.75 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.75 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be about 1 foot of freeboard in the old pond.

On December 22, 2006, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 8.0 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.5 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be about 1 foot of freeboard in the old pond.

On December 26, 2006, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 8.7 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 1.8 feet of available freeboard. No pumps were in operation at the time as an electrical outage had occurred in the valley. Electrical crews were observed at work and had restored power to the site just at the conclusion of the inspection. According to one Miller Salvage employee, power had been out a total of about 8 hours. Leachate continued to be impounded on top of the wood waste pile. There appeared to be about 1 foot or less of freeboard in the old pond.

On December 28, 2006, Pat Hudnall inspected the site and observed the level in the leachate collection pond was approximately 8.5 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.0 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be about 1 foot of freeboard in the old pond.

Mr. Hudnall observed a Miller Salvage employee using a bulldozer to cut a bench across the southwestern corner of the pile. The employee was cutting the toe of the slope and was working his way north along the western side of the pile. Some of the excavated waste material was falling into the ring ditch and began clogging the return leachate flow. Mr. Hudnall asked the employee

**LETTER TO: MILLER LAND COMPANY
INSPECTIONS
JANUARY 26, 2007
PAGE 5 OF 8**

what his intention was. The employee stated that he was going to continue the road along the entire western toe of the pile. The employee indicated that he thought "it will pack down the seeps along the bottom of the pile and help give more area for the water to soak in." Mr. Hudnall cautioned the employee that his activity was causing leachate flow to back up in the ditch. The employee said that he would get the backhoe and clean out the ditch. Mr. Hudnall further cautioned the employee about the safety of pursuing this activity, as he was creating an unstable situation that could collapse on the worker and his equipment. Upon his return to the office, Mr. Hudnall and Steve Rine, SEDO-DSIWM Supervisor, telephoned Mr. Fred Miller and advised him of the employee's activities and of the potential for accident or injury.

On January 2, 2007, Pat Hudnall inspected the site and observed the level in the leachate collection pond was approximately 8.5 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 2.0 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile, and it appeared that the quantity of leachate impounded on top of the pile had dramatically increased. It was observed that Miller Salvage employees continued to attempt to solidify leachate on the pile. There appeared to be about 1 foot of freeboard in the old pond. There did not appear to be any further excavation work on the creation of the bench activity of the previous inspection. Some slumping had occurred onto the terraced bench and the ring ditch had been cleaned of the sliding material.

On January 5, 2007, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 9.0 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 1.5 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. It was observed that Miller Salvage employees continued to attempt to solidify leachate on the pile. There appeared to be about 1 foot of freeboard in the old pond.

On January 8, 2007, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 9.25 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 1.25 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. It was observed that Miller Salvage employees continued to attempt to solidify leachate on the pile. There appeared to be slightly less than 1 foot of freeboard in the old pond.

On January 11, 2007, Pat Hudnall and Dan Bergert, accompanied by Kelly Capuzzi and Dave Hunt of this office inspected the site and observed the level in the leachate collection pond was approximately 9.25 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 1.25 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. It was observed that Miller Salvage employees continued to attempt to solidify leachate on the pile. There appeared to be about 1 foot of freeboard in the old pond. Samples were collected from the leachate collection pond, the old pond, and of seeps entering Kincaid Creek.

On January 14, 2007, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 9.7 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 0.8 feet of available freeboard. Two pumps were in operation recirculating leachate back onto the pile at the time. The third pump had failed and was

**LETTER TO: MILLER LAND COMPANY
INSPECTIONS
JANUARY 26, 2007
PAGE 6 OF 8**

inoperative. Miller Salvage employee Mark Hawk arrived during the inspection and began to diagnose the problem with the failed pump. Leachate continued to be impounded on top of the wood waste pile in what appeared to be even greater quantities than before. Large berms of wood waste about 5 - 6 feet in height had been constructed around each of the recirculation guns. There appeared to be about 8 - 10 inches of freeboard in the old pond.

On January 15, 2007, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 10.2 feet according to the gauge mounted on the inslope of the pond. This corresponds to about 2 inches of available freeboard. It was observed that the pond dam had low spots in the southwestern and southeastern corners. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. It was observed that Miller Salvage employees continued to attempt to solidify leachate on the pile. There was evidence that the berm around the southern gun had breached since the previous day, releasing a large slug of leachate to the ring ditch and subsequently to the leachate collection pond. A new erosion ditch about 5 feet deep had cut down through the southern face of the pile. The berm had been repaired prior to the inspection. There appeared to be about 8 inches of freeboard in the old pond. The Miller Salvage tanker was brought to the site during the inspection and was being loaded with leachate from the pond at the end of the inspection. Miller Salvage employees reported that 2 tanker loads of leachate had been hauled for disposal on the previous day.

On January 16, 2007, Pat Hudnall inspected the site and observed the level in the leachate collection pond was approximately 9.75 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 0.75 feet of available freeboard. Sandbags had been added to the low spots to the southern corners of the pond. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be about 8 inches of freeboard in the old pond.

On January 17, 2007, Dan Bergert inspected the site and observed the level in the leachate collection pond was approximately 9.55 feet according to the gauge mounted on the inslope of the pond. This corresponds to approximately 0.95 feet of available freeboard. Three pumps were in operation recirculating leachate back onto the pile at the time. Leachate continued to be impounded on top of the wood waste pile. There appeared to be about 8 inches of freeboard in the old pond.

Based upon our observations, Miller Land Company continues to be 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 was exceeded on December 2 - 5, 2006, and again from at least January 5, 2007, throughout the rest of the period in question. 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. Miller Land Company was in violation of this requirement from December 2 - 5, 2006, and from January 5 through January 17, 2007.

LETTER TO: FRED MILLER
INSPECTIONS
JANUARY 25, 2007
PAGE 7 OF 8

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 existing 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. Miller Land Company has been and continues to be in violation of this requirement since March 16, 2006, the date the property was transferred to Miller Land Company.

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.

As noted above, throughout the period in question, berms of wood waste have been constructed around each of the recirculation spray guns to impound leachate on the top of the pile. Miller Land Company has been and continues to be in violation of this requirement throughout the period from November 29, 2006 - January 17, 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. Previous documentation has been presented which indicate 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 exists from the pond and waste pile to Kincaid Creek.

Miller Land Company has been in continuous violation of this regulation since March 16, 2006, the date the property was transferred to Miller Land Company.

As shown by all of the violations listed above, Miller Land Company has failed to comply with this order.

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

LETTER TO: FRED MILLER
INSPECTIONS
JANUARY 25, 2007
PAGE 8 OF 8

Please provide a written response within 10 days detailing actions taken to correct the violations noted within this letter. The seriousness and severity of the ongoing violations at this site 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

012607DB2NOV/jg

cc: Pat Hudnall through Tim Campbell, DSW-SEDO
Dave Hunt, DDAGW-SEDO
Maria Galanti, DERR-SEDO
Carl Mussenden, DSIWM-CO
Steve Skinner, Chief-SEDO
George Horvath, Assistant Attorney General
Sandy Colegrove, Pike County Health Department
Fred Miller, Miller Salvage, Inc.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MILLER LAND CO.
 4214 N. ROBERT MILLER
 P.O. BOX 160
 LATHAM OH 45802-0160

2. Article Number

(Transfer from service label)

7006 0100 0003 5620 2570

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Beth Perkins* Agent
 Addressee

B. Received by (*Printed Name*)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (*Extra Fee*) Yes