



State of Ohio Environmental Protection Agency

Southeast District Office

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Logan, Ohio 43138

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

January 26, 2007

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

Mr. Fred Miller
and
Miller Salvage
P.O. Box #159
Latham, Ohio 45656

**FAX AND CERTIFIED MAIL
#7006 0100 0003 5620 2563**

**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 your 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 our inspections of your site from the period November 28, 2006 - January 17, 2007. The purpose of our 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 your 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 your 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. Your workers 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 your 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 your 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 your 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 your 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 toward and into the ring collection ditch. The ring ditch and the entire all surrounding area had been recently reworked by your 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 your gauge mounted on the inslope of the pond. This corresponds to just over 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.

Workers were observed preparing a means to load out leachate into the tanker truck.

**LETTER TO: FRED MILLER
INSPECTIONS
JANUARY 26, 2007
PAGE 3 OF 7**

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 your 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 your 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 your 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 your 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.

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 your 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 discolored 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 your 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 the workers were attempting to solidify leachate on the pile with some of the drier wood waste material, and then push the saturated waste off to 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 your 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 your gauge mounted on the inslope of the pond. This corresponds to approximately 2.5 feet of available freeboard. Three pumps were in

**LETTER TO: FRED MILLER
INSPECTIONS
JANUARY 26, 2007
PAGE 4 OF 7**

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 your 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 your 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 your 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 your 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 what his intention was. The employee stated that he was going to continue the road along the entire western toe of the pile. He 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 you and advised you 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 your 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 the workers continued to attempt to solidify leachate on the pile. There appeared to be about 1 foot of freeboard in the old

**LETTER TO: FRED MILLER
INSPECTIONS
JANUARY 26, 2007
PAGE 5 OF 7**

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 your 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 the workers 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 your 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 the workers 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 your 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 the workers 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 your 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 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 your 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 the workers 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 two 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 your 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 your 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, you are in violation of the following:

TRO ORDER #2, FILED NOVEMBER 14, 2006

The Court ORDERS and ENJOINS Defendants as follows: To immediately establish and maintain two feet of freeboard in the leachate collection pond at the Defendant's solid waste recycling Facility located at 1617 Laparrell Road, Latham, Pike County, Ohio to comply with the requirements of Consent Order April 15, 2005.

and

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. You were in violation of this requirement from December 2 - 5, 2006 and from January 5 through January 17, 2007.

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 January 1, 2006.

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, you have actively constructed berms of wood waste around each of the recirculation spray guns to impound leachate on the top of the pile. You have been and continue to be in violation of this requirement throughout the period from November 29, 2006 - January 17, 2007.

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

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 that 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.

You have been in continuous violation of this regulation.

TRO ORDER #4, FILED NOVEMBER 14, 2006

The Court ORDERS and ENJOINS Defendants as follows: To immediately manage all leachate at the Facility in accordance with federal, state, and local law and Consent Order April 15, 2005.

As shown by all of the violations listed above, you have failed to comply with this order.

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

011707DB2NOV/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
Robert Miller, Miller Land Company

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. Addressee Addressed to:

MICHAEL MILNER
MILNER SALVAGE
P.O. BOX 159
LATHAM OH 45656

2. Article Number
(Transfer from service label)

7006 0100 0003 5620 2563

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