

Miller Lumber



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 25, 2007

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

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

CERTIFIED MAIL
#7006 0100 0003 5620 2549

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

Dear Mr. Miller:

This office recently 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 discharge 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 Resolves 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. Copies of both orders are included with this letter. Both of the orders specify that "the provisions of the (Agreed Entry and COPI) will 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 October 19, 2006, and on several 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. In addition to my inspections, inspections of the leachate collection pond and the leachate management system have also been made by Pat Hudnall (SEDO-DSW) and Sandy Colegrove, Matt Fout, and Janelle McManus of the Pike County General Health District (PCGHD). This letter documents our inspections of the leachate management system from the period October 19 - November 28, 2006. The purpose of our inspections was to evaluate compliance with 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, 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.

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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 design capacity of 1.9 million gallons at 8.5 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 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, you have not operated the pond in accordance with the approved plans or the AJPI. Mr. Miller installed a second pump and gun, and later a third pump and gun, to increase the rate at which leachate is sprayed back onto the pile. Further operational issues will be discussed in a subsequent letter.

OBSERVATIONS BY DATE:

On October 19, 2006, the level in the leachate collection pond was at approximately 8.75 feet according to the gauge mounted on the inslope of the pond. This corresponds to 1.75 feet of available freeboard. At that time, no recirculation pumps were in operation, and the perimeter collection ditches that ring the pile and lead to the pond were flowing into the pond with a significant stream of leachate.

On October 20, 2006, Steve Rine (SEDO-DSIWM Supervisor) and I spoke with Fred Miller (Mr. Miller) in a telephone conversation. Mr. Miller stated that both of the recirculation pumps were found to have failed at lunchtime on Wednesday, October 18, 2006. Mr. Miller said that the leachate level in the pond at the time of pump failure was about 8.0 feet. Mr. Miller said that efforts were made to replace the pumps and that they were back on line by late afternoon on Thursday, October 19, 2006. Mr. Miller said that the level had reached about 9.0 feet by the time the repairs were completed. Mr. Miller said that the level had stabilized and was holding at 9.0 feet at the time of our telephone conversation. This corresponds to 1.5 feet of available freeboard. We reminded Mr. Miller of his obligation per the AJPI to properly manage the level within the pond by hauling for treatment and permitted disposal if necessary to maintain the level at or below the maximum design capacity. Mr. Miller stated that he was unable, and therefore unwilling to pump and haul leachate for disposal and that all he would do was spray the leachate onto the pile.

On October 23, 2006, PCGHD inspected the leachate collection pond level and informed me of the results. Sandy Colegrove reported to me that the level at 1:00 P.M. on October 23, 2006, was 9.0 feet. This corresponds to 1.5 feet of available freeboard. Photographs were provided via e-mail. Both recirculation pumps were in operation.

On October 24, 2006, Pat Hudnall, Ohio EPA, SEDO-DSW, inspected the site and reported that the leachate collection pond water level was 9.0 feet. This corresponds to 1.5 feet of available freeboard. Both recirculation pumps were in operation.

October 25, 2006, Pat Hudnall inspected the site and reported that the leachate collection pond water level was slightly below 9.0 feet. This corresponds to 1.5 feet of available freeboard. Both recirculation pumps were in operation.

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On October 30, 2006, PCGHD inspected the leachate collection pond level and informed me of the results. Sandy Colegrove reported to me that the level on the afternoon of October 30, 2006, was about 9.62 feet (midway between 9.5 and 9.75 feet). This corresponds to about 0.88 feet of available freeboard. Photographs were provided via e-mail. Both recirculation pumps were in operation.

On November 1, 2006, prior to our visit to the site we signed in at your office and spoke with both Fred Miller (Mr. Miller) and you. Mr. Miller stated that another pump had failed and that his workers were currently installing the pump from the old pond as a temporary replacement for recirculation in the new pond. We again reminded Mr. Miller of his obligation per the AJPI to properly manage the water level within the pond by hauling for treatment and permitted disposal if necessary to maintain the level at or below the maximum design capacity. Mr. Miller stated again that he was unable, and therefore unwilling to pump and haul leachate for disposal and that all he would do was spray the leachate onto the pile.

On November 1, 2006, I inspected the site and observed the water level in the leachate collection pond was approximately 9.75 feet. This corresponds to 0.75 feet of available freeboard. One recirculation pump was in operation and the other was in the process of being replaced, per my discussion with Mr. Miller.

On November 6, 2006, PCGHD inspected the leachate collection pond level and informed me of the results. Sandy Colegrove reported to me that the level was about 9.62 feet. This corresponds to 0.88 feet of available freeboard. Photographs were provided via e-mail. Both recirculation pumps were in operation.

On November 11, 2006, I inspected the site and observed the level in the leachate collection pond was approximately 9.62 feet. This corresponds to 0.88 feet of available freeboard. Both recirculation pumps were in operation.

On November 12, 2006, I inspected the site and observed the level in the leachate collection pond was approximately 9.62 feet. This corresponds to 0.88 feet of available freeboard. Both recirculation pumps were in operation.

On November 13, 2006, PCGHD inspected the leachate collection pond level and informed me of the results. Janelle McManus reported to me that the level was about 9.87 feet. This corresponds to 0.63 feet of available freeboard. Photographs were provided via e-mail. Both recirculation pumps were in operation. Butch Moore, the Miller Salvage foreman, subsequently informed me via a telephone call, that the increased level was due to a pump failure during the night.

On November 14, 2006, I inspected the site and observed the level in the leachate collection pond was approximately 9.75 feet. This corresponds to 0.75 feet of available freeboard. Both recirculation pumps were in operation.

On November 14, 2006, the Pike County Court of Common Pleas issued a Temporary Restraining Order (TRO) to Mr. Miller and Miller Salvage ordering Mr. Miller to, among other things, manage all leachate at the facility in accordance with federal, State, and local law and Consent Order April 15, 2005, (the AJPI).

On November 15, 2006, PCGHD inspected the leachate collection pond level and informed me of the results. Matt Fout reported to me that the level was about 9.5 feet. This corresponds to 1.0 feet of available freeboard. Photographs were provided via e-mail. Mr. Fout also informed me that Mr. Miller had installed a third recirculation pump and gun on the pile.

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On November 16, 2006, Pat Hudnall inspected the site and reported that the leachate collection pond level was about 9.5 feet. This corresponds to 1.0 feet of available freeboard. All three recirculation pumps were in operation.

On November 17, 2006, Pat Hudnall inspected the site and reported that the leachate collection pond level was about 9.5 feet. This corresponds to 1.0 feet of available freeboard. All three recirculation pumps were in operation.

On November 19, 2006, Pat Hudnall inspected the site and reported that the leachate collection pond level was about 9.3 feet. This corresponds to 1.2 feet of available freeboard. All three recirculation pumps were in operation.

On November 20, 2006, I inspected the site and observed the level in the leachate collection pond was approximately 9.375 feet. This corresponds to 1.13 feet of available freeboard. All three recirculation pumps were in operation.

On November 21, 2006, Pat Hudnall inspected the site and reported that the leachate collection pond level was about 9.0 feet. This corresponds to 1.5 feet of available freeboard. All three recirculation pumps were in operation. However, it was also observed that the existing pond (located in the southwest corner of the site), was again full of leachate and within 6 inches of the top of the dam. It was apparent that the leachate collection ditch that rings the facility and leads to the leachate collection pond had breached and allowed leachate to flow into the existing pond. Mr. Hudnall reported that apparent breach in the leachate collection ditch had been repaired by the time of his inspection.

On November 22, 2006, PCGHD inspected the leachate collection pond level and informed me of the results. Matt Fout reported to me that the level was about 9.0 feet. This corresponds to 1.5 feet of available freeboard. Photographs were provided via e-mail. All three recirculation pumps were in operation. Mr. Fout also reported that a leachate release had occurred at a point below a small steel pipe that acted as a culvert under an access road just south of the new leachate collection pond. The leachate was observed from just below the pipe into the ditch below and down into the field.

On November 24, 2006, I inspected the site and observed the level in the leachate collection pond was approximately 8.85 feet. This corresponds to 1.65 feet of available freeboard. All three recirculation pumps were in operation. The leachate level within the existing pond continued to be within about 6" of the top of the dam. I also observed that leachate was seeping through the western outslope of the existing pond dam. I also observed that the ditch below the steel pipe (described above) continued to contain leachate that had discharged from the site.

On November 26, 2006, I inspected the site and observed the water level in the leachate collection pond was approximately 8.7 feet. This corresponds to 1.8 feet of available freeboard. All three recirculation pumps were in operation. The leachate level within the existing pond continued to be within about 6" of the top of the dam. Leachate continued to seep through the western outslope of the existing pond dam. The ditch below the steel pipe continued to hold leachate discharged from the site. In addition, another leachate release had occurred north of the pile. Leachate was observed on the access road and in the drainage ditch immediately below, and had flowed all the way down into the field.

During this visit, I also observed extensive erosion of wood waste actively occurring on the north end of the pile. It appeared that one of the berms of wood waste placed around the guns had failed, allowing the leachate being sprayed on the pile to immediately flow down the pile and back to the pond. The concentrated flow across the pile had cut a channel several feet deep. The sediment from this erosion accumulated in the concrete sediment collection basin (located between the collection ditch and the

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leachate collection pond). The rapid buildup of sediment within the sediment collection basin clogged the pipe leading to the leachate collection pond. Once clogged, the leachate level within the sediment basin began rising and backing up into the leachate collection ring ditch above. During my inspection, I observed the leachate level within the sediment basin rise about one and one half feet. Since no one was on site, I returned to the Miller Salvage garage and informed Mr. Moore of the situation and of the potential dangers should the system not be immediately corrected. Mr. Moore stated he would have a worker address the problem as soon as he (the worker) returned from town.

On November 27, 2006, PCGHD inspected the leachate collection pond level and informed me of the results. Matt Fout reported to me that the level was about 8.62 feet. This corresponds to 1.88 feet of available freeboard. The leachate level within the existing pond continued to be within about 6" of the top of the dam. Photographs were provided via e-mail. All three recirculation pumps were in operation. Mr. Fout also observed that a small gasoline powered pump had been placed on the west side of the old pond and was pumping leachate from the old pond into the ring collection ditch.

On November 28, 2006, Pat Hudnall inspected the site and reported that the leachate collection pond level was about 8.5 feet. This corresponds to 2.0 feet of available freeboard. All three recirculation pumps were in operation. The leachate level within the existing pond continued to be within about 6" of the top of the dam. Mr. Hudnall also observed that a large release of leachate had occurred. Leachate had entered a diversion ditch on the east side of the existing pond and had flowed southward, through a culvert under an access road, and into a larger diversion ditch heading west. From there, the leachate entered into the large field west of the site and spread out forming large shallow pools and puddles. This release contained a large amount of leachate. As documented by the prior geoprobe investigation occurring in November 2003, the discharge from this release will gradually seep into the sand and gravel below the soil and will eventually discharge into Kincaid Creek, adjacent to this field.

Leachate Impoundments in the Waste Pile

Throughout the time period of November 1 to November 28, 2006, we observed leachate being impounded on top of the waste pile due to excessive recirculation. The bulldozer was observed to be in near constant motion on top of the pile, scraping off completely saturated waste. Additionally, we began observing the creation of wood waste berms being created around each gun for the apparent purpose of impounding as much leachate on top of the pile as possible. By November 1, 2006, it was observed these berms were in place and impounding pools of leachate on top of the pile. Over time, the volume of leachate impounded continued to increase. During this period, we continued to observe the effects of more and more leachate being impounded within the waste pile: small slope failures and berm failures that resulted in extensive erosion and subsequent deposition of sediment. The effect of these events has been unauthorized releases of leachate to the existing pond and the environment. It should be noted during this entire period of monitoring that no leachate was removed from the system for proper disposal. Despite multiple documented releases, Mr. Miller has only sprayed more and more leachate into a system already exceeding capacity.

Based upon our observations, Miller Salvage, Mr. Fred Miller, and Miller Land Company 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.

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The observations indicate that the 8.5 feet depth design capacity was exceeded on October 19, 2006, and remained so until November 28, 2006. 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 October 19, 2006, through November 27, 2006.

AJPI, PARAGRAPH 5j, FILED APRIL 15, 2005 - (relevant to the existing pond)

Defendants shall maintain at least one (1) foot of freeboard space in the existing pond. Defendants shall immediately commence proper removal of leachate for authorized land application, treatment, or permitted disposal should the freeboard become less than one (1) foot in the new pond.

As noted above, on or prior to November 21, 2006, an apparent breach in the leachate collection ditch that rings the facility lead to a large volume of leachate that flowed into and refilled the existing (old) pond to a level within 6 inches of the top. It has been previously shown 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, and Kincaid State Fish Hatchery. It was at least six days before any visible efforts were made to begin pumping leachate out of the existing pond and returning it to the leachate collection pond. This violation began on or about November 21, 2006, and continued unabated throughout the reporting period of this letter.

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. Miller Land Company has been and continues to be in violation of this requirement since purchase of this property on March 13, 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, beginning some time prior to November 1, 2006, Mr. Miller began actively constructing berms of wood waste 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 since approximately November 1, 2006.

COPI PARAGRAPH 5N, FILED NOVEMBER 28, 2001

Immediately restore and maintain a containment and collection ditch around the storage pile.

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As noted above, leachate releases beyond the containment and collection ditches were noted on the following occasions:

- 1) On November 21, 2006, we observed that the existing pond was again full of leachate and within 6 inches of the top of the dam. It was apparent that the leachate collection ditch that rings the facility and leads to the leachate collection pond had breached and allowed leachate to flow into the existing pond. As noted above, it has been shown 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, and Kincaid State Fish Hatchery.
- 2) On November 22, 2006, we first observed leachate discharged from the site through a small steel pipe that acted as a culvert under an access road just south of the new leachate collection pond. The leachate was observed from just below the pipe into the ditch below and down into the field.
- 3) On November 24, 2006, we observed that leachate had begun to seep through the western outslope of the existing pond dam.
- 4) On November 26, 2006, we observed leachate on the access road north of the pile and in the drainage ditch immediately below, flowing all the way down into the field.
- 5) On November 28, 2006, we observed a large release of leachate had occurred. Leachate had entered a diversion ditch on the east side of the existing pond and had flowed southward, through a culvert under an access road, and into a larger diversion ditch heading west. From there, the leachate entered into the large flat field west of the site and spread out into large shallow pools and puddles.

Each of these releases are violations of the above noted orders.

AJPI PARAGRAPH 5D, FILED APRIL 15, 2005

Upon completion of the new leachate collection pond, Defendants shall... operate the new leachate collection pond and associated structures in accordance with the approved plans and the conditions of the PTI.

As noted above, we noted the following unapproved modifications were made regarding operation of the pond: First a second pump and recirculation gun were added to double the rate at which leachate could be recirculated onto the piles. When this rate was not sufficient to keep the leachate level within the leachate collection pond from rising, Mr. Miller added a third pump and recirculation gun.

The PTI called for two pumps (a primary and a backup) to be located and operated from the pump vault. The approved PTI and pond design do not include operating two, much less, three guns in unison. Miller Land Company has been in continuous violation of this order since your purchase of this property.

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 the primary means by which leachate from the site reaches these seeps is by:

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- 1) Leaking through the damaged liner of the existing pond, into the sand and gravel below. It then migrates laterally to the seeps along the stream bank;

or,

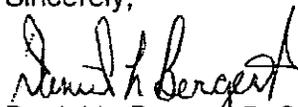
- 2) Overland releases into the field west of the site. From there, the leachate gradually infiltrates downward into the sand and gravel below, then migrates laterally to the seeps along the stream bank.

As noted above, there have been multiple releases of leachate, both to the existing pond and to the field. Each leachate release eventually leads to the pollution of waters of the State. Miller Land Company has been in continuous violation of this regulation.

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 Miller Land Company 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

011807DB11NOV/jg

Attachments: AJPI dated April 15, 2005
COPI dated November 28, 2001

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

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:

MILLERLAND CO., INC.

ATTN ROBERT MILLER

P.O. Box #160

LATHAM OH ~~43656~~

43644

2. Article Number

(Transfer from service label)

7006 0100 0003 5620 2549

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Beth Perkins*

Agent

Addressee

B. Received by (Printed Name)

Beth Perkins

C. Date of Delivery

1-29-07

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