

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JUL 31 2013

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

Pike Sanitation Inc.	:	<u>Director's Final Findings</u>
123 South Lock St	:	<u>Final Findings and Orders</u>
Waverly, OH 45690	:	
Rumpke Waste, Inc.	:	
10795 Hughes Road	:	
Cincinnati, OH 45251	:	

Respondents

PREAMBLE

The parties having engaged in settlement discussions and desiring to avoid litigating disputed claims, have reached an agreement pursuant to Ohio Revised Code ("ORC") 3745.01 to resolve said claims through these Director's Final Findings and Orders ("Orders").

I. JURISDICTION

These Orders are issued to Pike Sanitation Inc. and Rumpke Waste, Inc. ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under ORC Sections 3734.02(A), 3734.13, and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and successors in interest liable under Ohio law. No change in ownership of the Facility as hereinafter defined shall in any way alter Respondents' obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734 and the rules promulgated thereunder.

IV. FINDINGS

1. Pike Sanitation, Inc. ("Pike") is the owner, operator, permittee, and licensee of Pike Sanitation Landfill located at 11775 State Route 220 East, Waverly, Pike County, Ohio (the "Facility"). The Facility is a sanitary landfill as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01.
2. Rumpke Waste, Inc. ("Rumpke") asserts that it intends to purchase the Facility.
3. Pike and Rumpke are each a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
4. On or about July 14, 1994 an application for a permit to install was submitted for the Facility that included a survey showing the Facility's property boundaries. The Facility's permit was issued based upon the information contained in that application. A new survey of the Facility, attached hereto as Attachment 1, indicates that the survey submitted with the permit application may have included inaccurate information. A portion of the Facility, identified as the "Affected Area" in Attachment 1, does not conform with OAC Rule 3745-27-07(H)(4)(b).
5. OAC Rule 3745-27-60(B) provides that storage of scrap tires in any amount outside or inside a building shall be deemed a nuisance, a hazard to public health or safety, or a fire hazard unless the tires are stored in accordance with the standards set forth within OAC Rule 3745-27-60(B)(1) - (10).
6. OAC Rule 3745-27-65(E)(3)(a)(i) provides that a class II scrap tire recovery facility may store whole, cut, baled, and rough shredded scrap tires outdoors so long as the storage area does not exceed ten thousand square feet or seven times the Facility's daily designed input capacity.
7. Respondent Pike operates a class II scrap tire recovery facility at the Facility. The daily designed input capacity for the class II scrap tire recovery facility is fifty (50) tons.
8. By July 29, 2013, approximately 120,000 cubic yards (12,000 tons) of scrap tires were accumulated at the Facility. The scrap tires are currently stored in nine storage piles located at the Facility as shown on the attached drawing ("Attachment 2"). The storage piles range from 275 to 485 feet in length, 70 to 200 feet in width, and are approximately 12-14 feet in height. Fire lanes separating the storage piles range from 35 to 135 feet in width. The scrap tires at the Facility are not stored in

accordance with the requirements of OAC Rule 3745-27-60(B) or OAC Rule 3745-27-65(E)(3)(a)(i).

9. OAC Rule 3745-27-19(E)(9) states the owner or operator shall employ all reasonable measures to collect, properly contain, and dispose of scattered litter, including the use of portable wind screens where necessary and frequent policing of the area.
10. OAC Rule 3745-27-19(J)(3) provides that if ponding or erosion occurs on areas of the sanitary landfill facility where waste is being, or has been, deposited, the owner or operator shall undertake actions as necessary to correct the conditions causing the ponding or erosion.
11. OAC Rule 3745-27-19(E)(7)(c) states that the owner or operator shall confine the unloading of waste materials to the smallest practical area, and requires that the owner or operator ensure that each unloading area is supervised by a person or persons knowledgeable regarding operations at the working face.
12. By letter dated June 14, 2013, the Pike County General Health District cited Pike for the following violations:
 - A. Failing to employ all reasonable measures to collect, properly contain, and dispose of scattered litter, in violation of OAC Rule 3745-27-19(E)(9);
 - B. Failing to correct conditions causing erosion along the side slopes of the landfill, in violation of OAC Rule 3745-27-19(J)(3); and
 - C. Failing to confine the unloading of waste materials to the smallest practical area, in violation of OAC Rule 3745-27-19(E)(7).
13. Pursuant to ORC Section 3734.02(A) and OAC Rule 3745-27-03(C), the Director may grant a variance if he determines that the construction, operation, closure activities, and/or post-closure activities in the manner approved by the variance and any terms or conditions imposed as part of the variance will not create a nuisance or hazard to public health or safety or the environment and are unlikely to result in a violation of any other requirements of Chapter 3704, 3714, or 6111 of the Revised Code and rules adopted thereunder.
14. Pursuant to ORC Section 3734.02(A) and OAC Rule 3745-27-03(C), Respondent Pike has requested a variance from OAC Rule 3745-27-07(H)(4)(b), which prohibits the limits of solid waste placement at a sanitary landfill facility from being located within three hundred (300) feet of the Facility's property line. As indicated in

Attachment 1, the limits of solid waste placement in the Affected Area are located less than three hundred (300) feet from the Facility's property line.

15. The Affected Area contains whole and/or processed scrap tires that were disposed in a moncell constructed in accordance with Permit to Install 06-4200. Respondents assert that excavation and re-disposal of the scrap tires would increase the potential for creating a nuisance or hazard to public health or safety or the environment. Granting a variance from the requirement of OAC Rule 3745-27-07(H)(4)(b) for the limits of solid waste placement in the Affected Area that are less than three hundred (300) feet from the Facility's property boundary to remain as depicted in Attachment 1 will not create a nuisance or hazard to public health or safety or the environment and is unlikely to result in a violation of any other requirements of Chapter 3704, 3714, or 6111 of the Revised Code and rules adopted thereunder.

V. ORDERS

Respondents shall achieve compliance with ORC Chapter 3734 and the rules promulgated thereunder according to the following compliance schedule:

1. Upon the effective date of these Orders Respondents shall cease acceptance of scrap tires until such time as the scrap tires at the Facility are stored and managed in compliance with OAC Rules 3745-27-60 and 3745-27-65(E)(3)(a)(i).
2. Not later than one hundred eighty (180) days after the effective date of these Orders, Respondents shall store and manage all scrap tires in compliance with OAC Rule 3745-27-60.
3. Not later than eighteen (18) months after the effective date of these Orders all scrap tires at the Facility shall be stored and managed in compliance with OAC Rule 3745-27-65(E)(3)(a)(i).
4. Not later than eighteen (18) months after the effective date of these Orders, Respondents shall ensure that the scrap tires have been managed in accordance with one or both of the following:
 - A. Place the scrap tires in accordance with the Facility's permit or other authorization issued by Ohio EPA;
 - B. Remove the scrap tires to a scrap tire storage, monofill, moncell, or recovery facility licensed under ORC Section 3734.81 or to such a facility in another state operating in compliance with the laws of that state. For scrap tires

disposed in accordance with ORC Chapter 3734, appropriate disposal fees may be calculated in accordance with the conversion factor of one cubic yard equals 0.35 tons, as specified in Appendix I of OAC Rule 3745-27-61.

Respondents shall utilize a registered scrap tire transporter for all scrap tires removed from the Facility. Respondents shall obtain receipts from the registered transporter and the facility, indicating weight, volume, or number of scrap tires received. Respondents shall forward all such documentation and receipts for transportation and disposal to Ohio EPA Southeast District Office within thirty (30) days after the transportation or disposal.

5. Not later than ninety (90) days after the effective date of these Orders, Respondents shall ensure that financial assurance is funded in accordance with OAC Rules 3745-27-15 and 3745-27-17 in an amount sufficient to ensure the proper removal and disposal of the scrap tires at the Facility.
6. Not later than ninety (90) days after the effective date of these Orders, Respondents shall correct areas upon the landfill slopes where erosion is occurring, pursuant to OAC Rule 3745-27-19(J)(3).
7. Not later than ninety (90) days after the effective date of these Orders, Respondents shall correct areas of scattered litter at the Facility, pursuant to OAC Rule 3745-27-19(E)(9).
8. Not later than ninety (90) days after the effective date of these Orders, Respondents shall confine unloading of waste materials to the smallest practical area, pursuant to OAC Rule 3745-27-19(E)(7).
9. Pursuant to ORC Section 3734.02(A) and OAC Rule 3745-27-03(C), Respondents are hereby granted a variance from the requirement of OAC Rule 3745-27-07(H)(4)(b) for the limits of solid waste placement in the Affected Area that are less than three hundred (300) feet from the Facility's property boundary to remain as depicted in Attachment 1. This variance shall remain in effect throughout the effective period of Permit to Install 06-4200 unless otherwise revoked.
10. Not later than ninety (90) days after the effective date of these Orders, Respondents shall obtain from Ohio EPA any authorization necessary to revise Permit to Install 06-4200 to accurately reflect the Facility's property boundary and limits of waste placement.

11. Respondent Pike shall pay to Ohio EPA the amount of seventy-six thousand six hundred sixty-seven dollars (\$76,667.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3734. in accordance with the following provisions:

- A. Within thirty (30) days after the effective date of these Orders, Respondent Pike shall pay the amount of sixty-one thousand three hundred thirty-three dollars and sixty cents (\$61,333.60) of the total amount which will be deposited into the environmental protection remediation fund established pursuant to ORC Section 3734.281. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for sixty-one thousand three hundred thirty-three dollars and sixty cents (\$61,333.60). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent Pike and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Processing and Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.
- B. In lieu of paying the remaining fifteen thousand three hundred thirty-three dollars and forty cents (\$15,333.40) of the civil penalty identified in this Order, Respondent Pike shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of fifteen thousand three hundred thirty-three dollars and forty cents (\$15,333.40) to the Ohio EPA Clean Diesel School Bus Program. Respondent Pike shall make payment within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for fifteen thousand three hundred thirty-three dollars and forty cents (\$15,333.40). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent Pike and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Processing and Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049 and to Ohio EPA, Division of Air Pollution Control, Assistant Chief, SIP Development and Enforcement, P.O. Box 1049, Columbus, Ohio 43216-1049.
- C. Should Respondent Pike fail to fund the Diesel Bus SEP in accordance with Order No. 11. B. above, Respondent Pike shall pay Ohio EPA fifteen thousand three hundred thirty-three dollars and forty cents (\$15,333.40) of the civil penalty in accordance with the procedures in Order No. 11. B.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Materials and Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "Rumpke Waste, Inc. and Pike Sanitation Inc. certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by the Respondents to Ohio EPA and shall be signed by a responsible official of Respondents. For purposes of these Orders, a responsible official is the principal executive officer, the ranking elected official, or other duly authorized employee.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of the Facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Materials and Waste Management
2195 Front Street
Logan, Ohio 43138

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, including but not limited to any rights Respondents may have to appeal final actions issued by Ohio EPA pursuant to these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

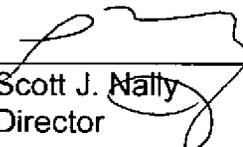
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

IT IS SO AGREED:

Rumpke Waste, Inc.

Signature

Date

Printed or Typed Name

Title

Pike Sanitation, Inc.

Signature

Date

Printed or Typed Name

Title

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Scott J. Nally
Director

IT IS SO AGREED:

Rumpke Waste, Inc.

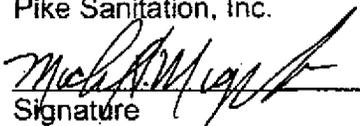
Signature

Date

Printed or Typed Name

Title

Pike Sanitation, Inc.



Signature

7/31/2013
Date

Michael V MITYANKO
Printed or Typed Name

PRESIDENT
Title

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Scott J. Nally
Director

IT IS SO AGREED:

Rumpke Waste, Inc.

Philip E. Wehrman
Signature

7/31/13
Date

Philip E. Wehrman
Printed or Typed Name

Chief Financial Officer
Title

Pike Sanitation, Inc.

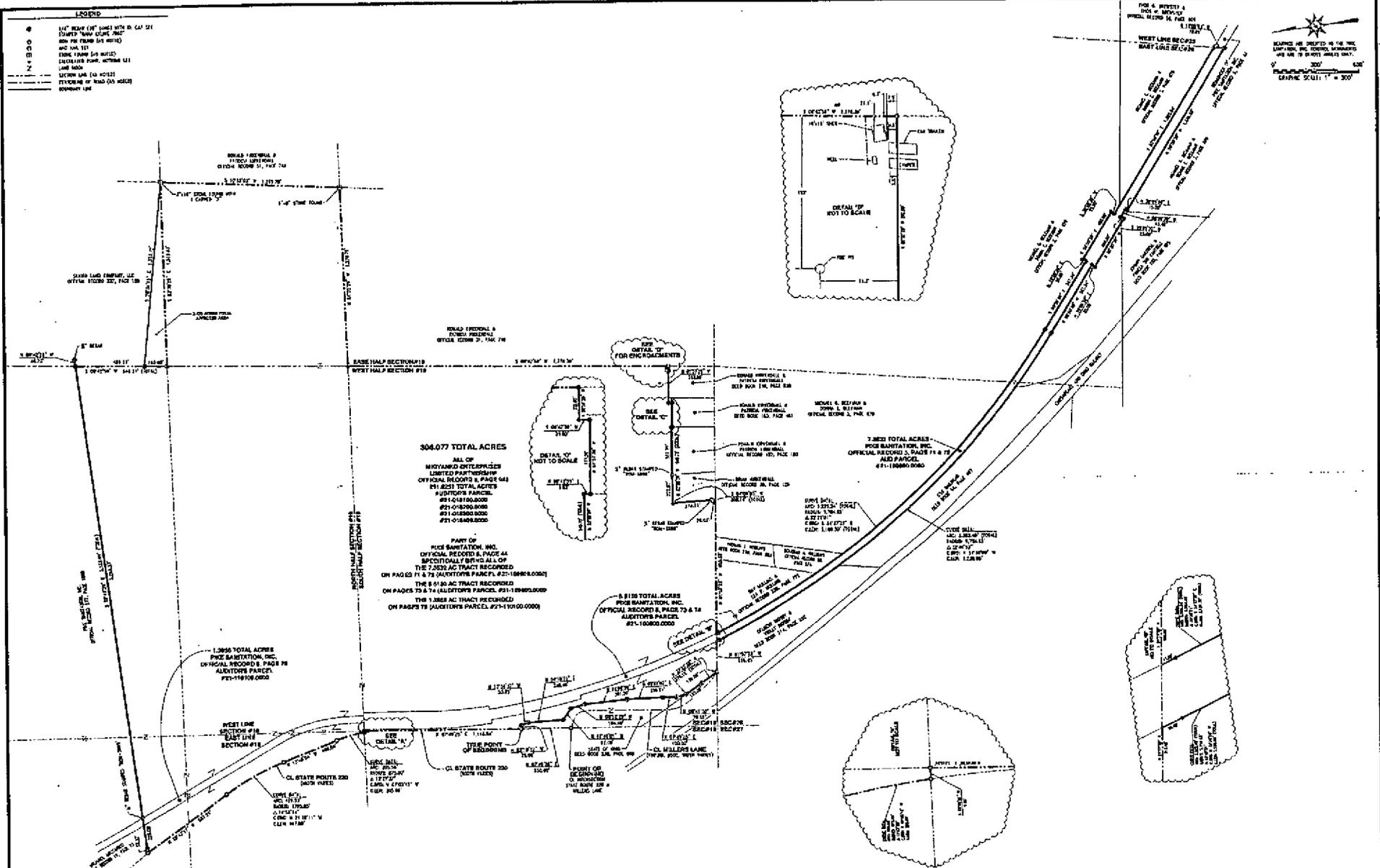
Signature

Date

Printed or Typed Name

Title

Attachment 1



- NOTES:
- 1) THIS SURVEY DOES NOT PURPORT TO REFLECT ALL EASEMENTS AND/OR ENCUMBRANCES AFFECTING THE TITLE TO THE SUBJECT PROPERTY.
 - 2) UNDERGROUND UTILITY LOCATIONS (IF ANY) WERE TAKEN FROM EXISTING RECORDS AND/OR FIELD SURVEY, AND DOES NOT REPRESENT A FIELD LOCATED SERVICE BY EXLINE SURVEYING, INC. ALL UNDERGROUND UTILITIES SHOULD BE VERIFIED BY AN UNDERGROUND UTILITY SPECIALIST BEFORE FINAL DESIGN AND/OR EXCAVATION.
 - 3) RECORDS ARE REFERRED TO THE PIKE SANITATION, INC. DEED AS RECORDED IN OFFICIAL RECORD 5, PAGE 44.
 - 4) NO STATEMENTS WERE MADE BY EXLINE SURVEYING, INC. TO VEREY WETLANDS. WETLANDS SHOULD BE VERIFIED BY A WETLAND SPECIALIST BEFORE FINAL DESIGN AND/OR EXCAVATION.
 - 5) DEED REFERENCES: RECORD PLATS AND SURVEYS BOOK, PAGE 127; 0607 N/W PLATS PG-229-12-48 AND DETAIL 10000 AND BOUNDARY SURVEY 'TOPIC OF WAY' AND TRACT MAP N-1-010/117 & 118.



EXLINE SURVEYING, INC. 10356 STATE ROUTE 139 JACKSON, OHIO 45640 PHONE: (740) 266-7000 • TELEPHONE: (740) 266-8012 FAX: (740) 266-8012	
BOUNDARY SURVEY ON THE PROPERTY OF MIGYANKO ENTERPRISES LIMITED PARTNERSHIP & PIKE SANITATION, INC. SECTION #18 & #19, TOWNSHIP #3 NORTH, RANGE #21 WEST SEAL TOWNSHIP, PIKE COUNTY, OHIO	
DRAWING DATE: 5/29/2013	DRAWING NUMBER: 080003003
TITLE PREPARED: 5/29/2013	SHEET NUMBER: 1 OF 1
CALCULATED BY: D. EXLINE	
DRAWN BY: P. TAYLOR	
CHECKED BY: D. EXLINE	
BOUNDARY SURVEY 7/17/2013	

Attachment 2

