

IN THE COURT OF COMMON PLEAS
PIKE COUNTY

STATE OF OHIO, ex rel.
JIM PETRO,
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

FRED MILLER, et al.

Defendants.

CASE NO. 493-CIV-01

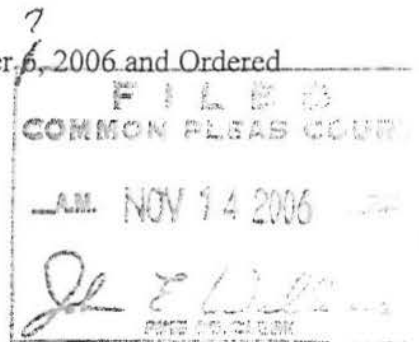
JUDGE DEERING

ORDERS FOR PRELIMINARY INJUNCTION AND TEMPORARY RELIEF

This matter came on for hearing November 7, 2006, pursuant to Civ.R. 65, R.C. 3734.10, and R.C. 6111.07, and having reviewed the pleadings, testimony, and the record including the Ohio EPA Notice of Violation of November 3, 2006, Agreed Entry Consent Order of April 15, 2005 ("Consent Order 4/15/05"), the Consent Order of November 28, 2001, the Ohio EPA Director's Final Findings and Orders of September 16, 1994, and Stipulation of Facts agreed and entered into November 7, 2006 and thereupon Ordered, this Court finds the State of Ohio's Motion well taken.

The Court finds the following:

1. The Stipulation of Facts as entered into on November 7, 2006 and Ordered is hereby incorporated as a matter of record as if fully rewritten.



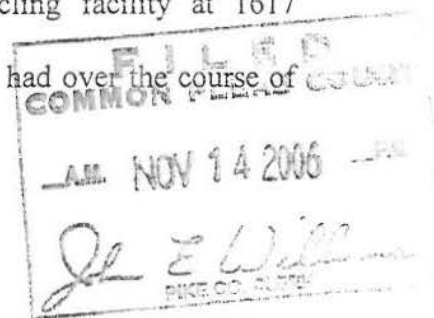
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2. Miller Salvage, Inc. ("Defendant Miller Salvage"), with its principal place of business at 1617 Laparrell Road, Latham, Pike County, Ohio 45649, is licensed to do business in the State of Ohio. Defendant Miller Salvage is a "person" as defined by R.C. 3734.01(G), 3704.01(O) and 6111.01(I); and Ohio Admin. Code 3745-15-01(U), 3745-27-01(P)(3) and 3745-33-01(Z). From approximately January 2002 until present, Defendant Miller Salvage was the "owner" and/or "operator," as defined by Ohio Admin. Code 3745-15-01(T), 3745-27-01(O)(5) and 3745-27-01(O)(7), of a solid waste recycling facility, located at 1617 Laparrell Road, Latham, Pike County, Ohio (the "Facility").

3. Defendant Fred Miller, as an individual and from at least 1993 to approximately April 30, 1999, from approximately January 2002, until present and operating as Miller Lumber Company, is a "person" as defined by R.C. 3734.01(G), 3704.01(O) and 6111.01(I); and Ohio Admin. Code 3745-15-01(U), 3745-27-01(P)(3) and 3745-33-01(Z). Defendant Fred Miller, from at least 1993 to approximately April 30, 1999 and from approximately January 2002, until present and was the "owner" and/or "operator," as defined by Ohio Admin. Code 3745-15-01(T), 3745-27-01(O)(5) and 3745-27-01(O)(7), of the Facility.

4. R.C. 3734.01(E) defines "solid wastes" to include such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris.

5. Defendant Miller Salvage has operated a recycling facility at 1617 Laparrell Road, Latham, Pike County, Ohio 45649. The Facility had over the course of



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years received large quantities of wood waste, which is stored in a large pile at across the Facility. As the wood waste comes in contact with rain water, leachate is generated.

6. Defendants are required to collect and properly maintain the leachate so as to prevent any illegal discharge to creeks, rivers, or any other waters of the State, pursuant R.C. 6111 and by the Consent Order 4/15/05.

7. The Facility's leachate collection pond is required to have two feet of freeboard in order to prevent leachate from spilling over the top of the ponds and potentially contaminating waters of the State per the Consent Order 4/15/05.

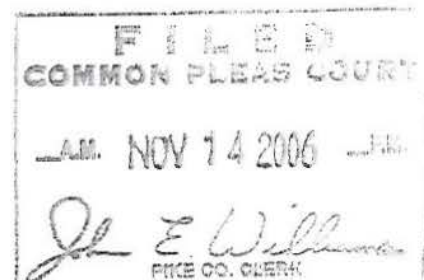
8. Before pollutants can be discharged into waters of the State, one must obtain a permit from the Director of Ohio EPA authorizing the discharge. Defendants do not have a permit to discharge leachate.

9. On several occasions Ohio EPA documented leachate releases from the Facility. Ohio EPA investigated and verified that leachate from the Facility was in fact flowing into Kincaid Creek.

10. Ohio EPA informed Defendants that Defendants needed to take immediate action to stop the discharges and take necessary measures to address the leachate. In the fall of 2005, the current larger leachate collection pond was constructed.

11. Over the course of weeks spanning mid-October and early November 2006, Ohio EPA informed Defendants that the pond leachate level was rising and that a significant rain event would likely cause the pond to overflow and leachate to enter waters of the State.

12. Defendants claimed they were unable to haul the leachate and therefore refused to do it.



13. Defendants acknowledged their understanding that unless pond levels are lowered, it is likely that the pond would overflow.

14. Ohio EPA inspected the Facility on various dates including October 19, 2006, and thereafter, to document the status of the ponds and the Facility. During the inspection on October 19, Ohio EPA observed the water beyond encroaching on the required two foot free board and that there was no removal of the leachate. Ohio EPA observed through a series of inspections thereafter that the pond was steadily rising.

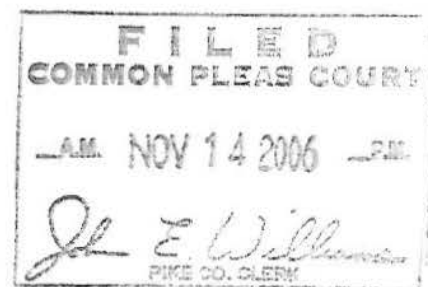
15. Ammonia is a byproduct of the biodegrading of wood waste materials from the Facility's wood waste pile and water. With rainwater and the reapplication of leachate to the wood waste piles, the leachate pond and leachate within the piles have become heavily concentrated with ammonia.

16. Since October 19, 2006, Ohio EPA observed that the leachate collection had less than two feet of freeboard to hold water if a significant rain event occurred. Ohio EPA further noted that the amount of freeboard was not in compliance with the Consent Order 4/15/05.

17. Ohio EPA issued a Notice of Violation to the Defendants on November 3, 2006, which informed the Defendants of the violation of the required two feet of freeboard and threat of overflow and/or breach.

18. Plaintiff has proved that the Defendants violated and/or threaten to violate R.C. Chapter 6111, a rule promulgated thereunder, the Consent Order 4/15/05, or an order or permit condition issued by the Director of the Ohio EPA.

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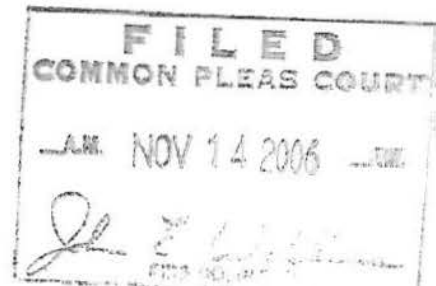


ORDERS AND INJUNCTION

Based on the foregoing, the Court ORDERS and ENJOINS Defendants Fred Miller and Miller Salvage Inc. as follows:

1. To immediately cease polluting waters of the State in violation of R.C. 6111.04; and
2. To immediately establish and maintain two feet of freeboard in the leachate collection pond at the Defendants' solid waste recycling facility ("Facility") located at 1617 Laparrell Road, Latham, Pike County, Ohio to comply with the requirements of Consent Order April 15, 2005; and
3. To maintain drainage at the Facility so as to prevent leachate runoff from contaminating waters of the State; and
4. To immediately manage all leachate at the Facility in accordance with federal, State, and local law and Consent Order April 15, 2005; and
5. To maintain the structural integrity of the leachate collection pond; and
6. To not construct any other leachate collection ponds unless permitted by the Director of Ohio EPA; and
7. ~~Within ten days, to disclose and provide financial documents as listed in the attachment entitled "Financial Documentation"; and~~
8. ~~To make themselves promptly available for deposition and/or subpoena duces tecum; and~~
9. ~~From transferring or divestiture of any real property, and/or any personal property with a value of \$1000.00 or greater, beginning the date of this Order, until~~

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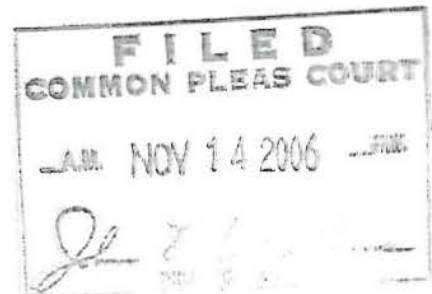
~~further order, without permission of the Court. In addition, Defendants shall provide an accounting of transfer and or divestiture of any and all assets since March 26, 2001.~~

IT IS SO ORDERED.

JUDGE DEERING

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FINANCIAL DOCUMENTATION

1. Most recent 5 years comprehensive annual financial reports including income statement, balance sheet, cash flow statement and notes to these financial reports for Miller Salvage, LLC;
2. Signed, dated and notarized personal statement of net worth for Fred Miller and all other owners of Miller Salvage LLC;
3. Most recent 5 years Income Tax Returns, including all required forms and schedules, for Miller Salvage LLC;
4. Most recent 5 years Individual Income Tax Returns including all required forms and schedules for Fred Miller and all other owners of Miller Salvage LLC;
5. Statements for all checking and savings accounts of Fred Miller;
6. A list of all real property owned in whole or in part by either or both Defendants, with assessed value for each parcel;
7. A list of all personal property, valued at \$1000.00 or more, owned in whole or in part and/or in the possession of either Defendant, with estimated value of each item;
8. All IRA, SEP, insurance accounts, and similar savings accounts;
9. Lending term disclosure for all loans made or received will include the loan date, current and opening balances, interest rate(s), repayment schedule, purpose of loan, loan recipient name/address, and lender name/address; and
10. Written inability-to-pay argument that specifically addresses financial reasons why compliance costs and/or civil penalty cannot be paid.

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