



State of Ohio Environmental Protection Agency

**Northwest District Office**

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Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korteski, Director

Re: Henry County  
Gerken Materials, Inc.—Plant #20  
Premise #0335980002  
**Notice of Violation**

January 11, 2010

CERTIFIED MAIL

Mr. Jim Scheub, Regulatory Compliance Manager  
Gerken Materials, Inc – Plant #20  
9-051 U.S. Route 24  
P.O. Box 607  
Napoleon, Ohio 43545

Dear Mr. Scheub:

This letter shall serve as a Notice of Violation (NOV) regarding the company's actions at the above referenced facility. Gerken Materials, Inc. (GMI) failed to conduct compliance testing at the above referenced facility on emissions unit P901 by the specified deadline in Permit to Install (PTI) #03-17424, issued 06/05/08. The testing requirements of this permit indicate that the company must conduct emissions testing within 60 days after achieving the maximum production rate, but no later than 120 days after initial start up of the emissions unit. A review of the production records showed that there were numerous days where significant amounts of asphalt were produced during the 2008 and 2009 seasons and testing could have been done. The company's operation of emissions unit P901 beyond the 120-day deadline without a compliance demonstration is both a violation of the testing requirements of the permit and Ohio Revised Code (ORC) 3704.05.

The purpose of the permit modification was to allow the company to use alternative fuels and to incorporate shingles into the aggregate mix. Prior to issuance of the permit, the company already began burning alternative fuels in emissions unit P901. The modification of an air contaminant source, as defined in Ohio Administrative Code (OAC) rule 3745-31-01(QQQ), without first obtaining a PTI modification is a violation of both OAC rule 3745-31-02 and ORC 3704.05.

The permitting history of this facility is, at best, confusing. Miller Brothers Paving, Inc. (MBPI, Premise #0326000007) originally operated a 200 TPH batch plant at the current site. The batch plant was installed in 1972 and, therefore, the company was required to only obtain an operating permit. The facility's files also indicate that MBPI replaced the batch plant with a 250 TPH drum mix plant in 2002 which required a PTI but none was ever issued. The files also indicate MBPI submitted correspondence to NWDO, DAPC requesting guidance on whether or not a PTI was required and NWDO, DAPC failed to respond.

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GMI purchased this facility from MBPI in 2003 and, since it is a portable plant, the Premise # was changed to 0335980002. GMI and NWDO, DAPC both believed that the existing permit for the plant was still effective. However, in reality, GMI's submittal on 02/20/08 of the permit modification request mentioned above resulted in the issuance of PTI #03-17424, the only permit this facility has ever had.

NWDO requires that the company conduct compliance testing within 30 days of the initial operation of the asphalt plant for the 2010 production season, with the understanding that if no projects of significant production volume occur within that time, the deadline will be extended. The company is required to notify this office if an extension to the deadline is necessary and provide reasonable supporting documentation. Please note that this testing will also resolve the past violations associated with 40 CFR Part 60, Subpart I and both MBPI and GMI's failures to have testing conducted in accordance with 40 CFR 60.8.

NWDO requests a written response to this letter by February 12, 2010. Please note that the submission of the requested information to respond to this letter does not constitute a waiver of the Ohio EPA's authority to seek civil penalties pursuant to ORC section 3704.06. The Ohio EPA will make the decision on whether to pursue or decline to pursue such penalties regarding this matter at a later date.

If you have any questions or comments about this letter, please feel free to contact me at (419) 373-3110.

Sincerely,



Brian Riedmaier  
Division of Air Pollution Control

//b

pc: Tom Kalman, CO-DAPC  
Lisa Holscher, USEPA-Region 5  
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