



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

June 8, 2018

**CERTIFIED MAIL**

Shelly Miller  
Treasurer  
Gerken Materials, Inc.  
9072 County Road 424  
Napoleon, Ohio 43545

Re: Final Findings and Orders for air pollution  
violations

Dear Ms. Miller,

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,

A handwritten signature in black ink, appearing to read "James Kavalec", is written over a horizontal line.

James Kavalec, Manager  
Compliance/Enforcement Section  
Division of Air Pollution Control

ec: James Lee, PIC  
Brandon Schwendeman, DAPC  
John Paulian, DAPC  
Lee Tullis, DAPC  
Don Vanterpool, Legal  
Muhammad Mereb, DAPC  
Tom Sattler, NWDO-DAPC

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**Gerken Materials, Inc.** : **Director's Final Findings**  
**9072 County Road 424** : **and Orders**  
**Napoleon, Ohio 43545** :

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Gerken Materials, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the facilities (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

**III. DEFINITIONS**

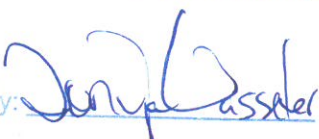
Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates the following asphalt paving mixture and block manufacturing facilities in Ohio, with a headquarters office located at 9072 County Road 424, Napoleon, Ohio. All of these facilities are classified as non-Title V.

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By:  Date: 6-8-18

#	Facility (ID)	Address	County
1	Plant 11 (0335012010)	6126 S. Main Street West Millgrove, Ohio 43467	Wood
2	Plant 21 (0335980006)	13762 County Road 179 Oakwood, Ohio 45873	Paulding
3	Plant 5 (0369000143)	13085 Road 7L Ottawa, Ohio 43560	Paulding
4	Plant 3 (0302000002)	310 Quarry Drive Bluffton, Ohio 45817	Allen
5	Plant 6 (0335010057)	8200 Sylvania Avenue Sylvania, Ohio 43560	Lucas
6	Plant 10 (0335010058)	9000 Portland Road Catalia, Ohio 44824	Erie
7	Plant 20 (0335980002)	State Route 15 Pioneer, Ohio 43554	Williams
8	Plant 4 (0335980007)	600 South River Road Waterville Township, Ohio 43566	Lucas
9	Plant 8 (0335980008)	Crane Township Road 105 and Country Road 180 Paulding, Ohio 45879	Paulding

2. ORC § 3704.05(C) prohibits any person who is a holder of a permit issued by the Director of Ohio EPA pursuant to ORC § 3704.03 from violating any of its terms and conditions.

3. ORC § 3704.05(G) prohibits a person from violating any order, rule, or determination of the Director that was issued, adopted, or made under ORC Chapter 3704.

4. The Standard of Performance for Hot Mix Asphalt Facilities (40 CFR Part 60, Subpart I) requires, in part, the owner or operator of a hot mix asphalt facility to meet certain requirements and emissions limits.

5. The requirements of 40 CFR Part 60, Subpart I are incorporated in Respondent's permit-to-install and operate ("PTIO") issued for the above facilities.

**Facility #1 (Plant 11, 0335012010)**

6. Emissions unit ("EU") P901 (HMA Plant 11) at Facility #1 that was installed on July 14, 2014 is the subject of these Orders and is subject to Ohio EPA rules and regulations.

7. On August 11, 2016, Ohio EPA, Northwest District Office ("NWDO") conducted an inspection of Facility #1.

8. PTIO P0122454 that was issued on April 19, 2017 (superseded PTIO P0112135 that was issued on April 16, 2013) required Respondent to conduct an initial performance test for EU P901 no later than 180 days after initial startup of the EU. The performance test was completed with passing results on September 15, 2017. Respondent failed to complete the performance test by October 16, 2013, in violation of the terms and conditions of PTIOs P0112135 and P0122454 and ORC § 3704.05(C).

9. PTIO P0122454 that was issued on April 19, 2017 (superseded PTIO P0112135 that was issued on April 16, 2013) required Respondent to conduct three burner tuning procedures for EU P901 every calendar year with few exceptions as identified in the PTIO.

10. Respondent failed to conduct two burner tuning procedures in 2015 and one in 2016 for EU P901, in violation of the terms and conditions of PTIOs P0112135 and P0122454 and ORC § 3704.05(C).

11. NWDO sent a notice of violation ("NOV") letter to Respondent for these violations on September 6, 2016.

12. NWDO received Respondent's response to the NOV on October 17, 2016. Respondent stated that the compliance test will be completed within six months of commencement of the 2017 paving season. Respondent also stated that scheduling the September 1<sup>st</sup> burner tuning was difficult and that Respondent will coordinate to meet this requirement in the future.

13. PTIO P0123220 that was issued on September 15, 2017 for EU P901, required Respondent to submit a proposed Baghouse Maintenance Plan ("BHMP") for the baghouse serving EU P901 within 30 days of the permit issuance date. The proposed BHMP was received by Ohio EPA on April 18, 2018. Respondent failed to submit the proposed Baghouse Maintenance Plan by October 15, 2017, in violation of the terms and conditions of PTIO P0123220 and ORC § 3704.05(C).

**Facility #2 (Plant 21, 0335980006)**

14. EU P901 (HMA Plant 21) at Facility #2 that was installed on October 25, 1995 is the subject of these Orders and is subject to Ohio EPA rules and regulations.

15. On August 23, 2016, NWDO conducted an inspection of Facility #2.

16. PTIO P0108266 that was issued on May 7, 2013 (superseded by PTIO P0122460 that was issued on April 19, 2017) required Respondent to conduct a performance test for EU P901 no later than 120 days after the facility produces asphalt in a single day of operation that exceeds the calculated threshold in the permit but not later than 12 months from the issuance date of the PTIO. The performance test was completed with passing results on September 28, 2017. Respondent failed to conduct the

performance test for EU P901 by May 7, 2014, in violation of the terms and conditions of PTIO P0108266 and ORC § 3704.05(C).

17. PTIO P0122460 that was issued on April 19, 2017 (superseded PTIO P0108266 that was issued on May 7, 2013) required Respondent to conduct three burner tuning procedures for EU P901 every calendar year with few exceptions as identified in the PTIO.

18. Respondent failed to conduct one burner tuning procedure in 2013, one in 2014, one in 2015, and two in 2016 for EU P901, in violation of the terms and conditions of PTIOs P0122460 and P0108266 and ORC § 3704.05(C).

19. NWDO sent a NOV letter to Respondent for these violations on September 14, 2016.

20. NWDO received Respondent's response to the NOV on October 21, 2016. Respondent stated that the compliance test will be completed within six months of commencement of the 2017 paving season. Respondent also stated that scheduling the burner tuning procedures was difficult and that respondent will coordinate to meet this requirement in the future.

**Facility #3 (Plant 5, 0369000143)**

21. EU P901 (HMA Plant 5) at Facility #3 that was installed on June 12, 2008 is the subject of these Orders and is subject to Ohio EPA rules and regulations.

22. On October 18, 2016, NWDO conducted an inspection of Facility #3.

23. PTI 03-17405 that was issued on June 10, 2008 required Respondent not to emit more than 0.16 pounds of volatile organic compounds ("VOC") per ton of asphalt produced.

24. On September 24, 2009, Respondent conducted an emission test for EU P901 and the emissions rate was 0.094 lb of VOC per ton of asphalt produced, demonstrating that the facility was in compliance with the permit limitation.

25. On October 18, 2016, Respondent conducted an emission test for EU P901 and the emissions rate was 0.33 lb of VOC per ton of asphalt produced, in excess of the permit limit and in violation of the terms and conditions of PTI 03-17405, ORC § 3704.05(C) and 40 CFR Part 60, Subpart I.

26. On January 5, 2017, Respondent requested NWDO to increase the permit limit for VOC based on the stack test of October 18, 2016.

27. On January 9, 2017, NWDO sent a NOV letter to Respondent for the VOC emissions violation.

28. NWDO received Respondent's response to the NOV on February 3, 2017. Respondent stated that it requested NWDO to increase the permit limit for VOC based on the stack test of October 18, 2016 to resolve the violation. Respondent did not provide justification for increasing the VOC limit, especially for the fact that EU P901 passed the stack test for VOC in 2009. NWDO requested Respondent to comply with the current permit VOC limit and a performance test with passing results was completed on November 7, 2017.

29. PTI 03-17405 that was issued on June 10, 2008 required Respondent to conduct three burner tuning procedures for EU P901 every calendar year with few exceptions as identified in the PTIO.

30. Respondent failed to conduct one burner tuning procedure in 2012, two in 2013, two in 2014, two in 2015 and three in 2016 for EU P901, in violation of the terms and conditions of PTI 03-17405 and ORC § 3704.05(C).

**Facility #4 (Plant 3, 0302000002)**

31. EU P901 (HMA Plant 3) at Facility #4 that was installed on August 5, 1992 is the subject of these Orders and is subject to Ohio EPA rules and regulations.

32. PTIO P0107895 that was issued on January 29, 2013 (superseded PTI 03-17404 that was issued on June 5, 2008) required Respondent to conduct a performance test for EU P901 no later than 120 days after the facility produces asphalt in a single day of operation that exceeds the calculated threshold in the permit. The deadline to complete the performance test was 12 months from the issuance date of the permit. The performance test was completed with passing results on November 17, 2017. Respondent failed to conduct the performance test for EU P901 by January 29, 2014, in violation of the terms and conditions of PTIO P0107895 and ORC § 3704.05(C).

33. PTIO P0107895 that was issued on January 29, 2013 (superseded PTI 03-17404 that was issued on June 5, 2008) required Respondent to conduct three burner tuning procedures for EU P901 every calendar year with few exceptions as identified in the PTIO.

34. Respondent failed to conduct one burner tuning procedure in 2012, one in 2013, two in 2014, two in 2015 and three in 2016 for EU P901, in violation of the terms and conditions of PTIO P0107895 and ORC § 3704.05(C).

**Facility #5 (Plant 6, 0335010057)**

35. EU P901 (HMA Plant 6) at Facility #5 that was installed on May 1, 2000 is the subject of these Orders and is subject to Ohio EPA rules and regulations.

36. PTIO P0116233 that was issued on April 25, 2016 (superseded PTI 03-13398 that was issued on December 4, 2001) required Respondent to conduct three burner tuning procedures for EU P901 every calendar year with few exceptions as identified in the PTIO.

37. Respondent failed to conduct three burner tuning procedure in 2016 for EU P901; in violation of the terms and conditions of PTIO P0116233 and ORC § 3704.05(C).

**Facility #6 (Plant 10, 0335010058)**

38. EU P901 (HMA Plant 10) at Facility #6 that was installed on January 14, 2002 is the subject of these Orders and is subject to Ohio EPA rules and regulations.

39. PTIO P0118961 that was issued on August 15, 2016 (superseded PTI 03-13425 that was issued on January 10, 2002) required Respondent to conduct performance test for EU P901 no later than May 17, 2017 (5 years after the most recent stack test). The performance test is scheduled to be completed on May 10, 2018. The ITT was received on March 30, 2018. Respondent failed to complete the performance test by May 17, 2017, in violation of the terms and conditions of PTIO P0118961 and ORC § 3704.05(C).

40. PTIO P0118961 that was issued on August 15, 2016 (superseded PTI 03-13425 that was issued on January 10, 2002) required Respondent to conduct three burner tuning procedures for EU P901 every calendar year with few exceptions as identified in the PTIO.

41. Respondent failed to conduct one burner tuning procedure in 2016 for EU P901, in violation of the terms and conditions of PTIO P0118961 and ORC § 3704.05(C).

**Facility #7 (Plant 20, 0335980002)**

42. EU P901 (HMA Plant 20) at Facility #7 that was installed on June 12, 2008 is the subject of these Orders and is subject to Ohio EPA rules and regulations.

43. PTIO P0120578 that was issued on June 28, 2016 (superseded PTIO P0107368 that was issued on April 27, 2011) required Respondent to conduct a performance test for EU P901 no later than one year from the permit issuance date. Respondent completed the performance test for EU P901 with passing results on August 23, 2017. Respondent failed to conduct the performance test for EU P901 by June 28, 2017, in violation of the terms and conditions of PTIO P0107895 and ORC § 3704.05(C).

44. PTIO P0120578 that was issued on June 28, 2016 (superseded PTIO P0107368 that was issued on April 27, 2011) required Respondent to conduct three burner tuning procedures for EU P901 every calendar year with few exceptions as identified in the PTIO.

45. Respondent failed to conduct one burner tuning procedure in 2012, two in 2013, two in 2014, two in 2015, and two in 2016 for EU P901; in violation of the terms and conditions of PTIOs P0120578 and P0107368, and ORC § 3704.05(C).

**Facility #8 (Plant 4, 0335980007)**

46. EU P901 (HMA Plant 4) at Facility #8 that was installed on May 1, 2005 is the subject of these Orders and is subject to Ohio EPA rules and regulations.

47. PTIO P0112150 that was issued on May 30, 2014 (superseded PTIO P0087223 that was issued on December 3, 2007) required Respondent to conduct three burner tuning procedures for EU P901 every calendar year with few exceptions as identified in the PTIO.

48. Respondent failed to conduct one burner tuning procedure in 2012, one in 2013, three in 2014, two in 2015, and three in 2016 for EU P901; in violation of the terms and conditions of PTIOs P0112150 and P0087223, and ORC § 3704.05(C).

**Facility #9 (Plant 8, 0335980008)**

49. EU P901 (HMA Plant 8) at Facility #9 that was installed on October 23, 2007 is the subject of these Orders and is subject to Ohio EPA rules and regulations.

50. PTIO P0115925 that was issued on June 1, 2016 (superseded PTI 03-17082 that was issued on June 7, 2007) required Respondent to conduct three burner tuning procedures for EU P901 every calendar year with few exceptions as identified in the PTIO.

51. Respondent failed to conduct one burner tuning procedure in 2013 and two in 2016 for EU P901, in violation of the terms and conditions of PTIOs P0112150 and P0087223, and ORC § 3704.05(C).

52. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.



## **V. ORDERS**

The Director hereby issues the following Orders:

1. Within thirty (30) days of the effective date of these Orders, Respondent shall conduct performance tests for EU P901 at facility #6 in accordance with PTI P0118961 for the facility.
2. Within 30 days from the effect date of these Orders, Respondent shall submit, to Ohio EPA, documentation demonstrating that all burner tuning procedures have been completed for the 2017 season for all applicable emissions units at Facilities #1 to #9.
3. Respondent shall pay the amount of forty thousand dollars (\$40,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for forty thousand dollars (\$40,000). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

## **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders, these obligations have been embedded in operation permits, and the Chief of Ohio EPA's Division of Air Pollution Control 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 Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

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

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(F)(1) for a corporation, a corporate officer who is in charge of a principal business function of Respondent.

## **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, operations by Respondent.

## **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 Respondent.

## **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 Respondent pursuant to these Orders shall be addressed to:

Ohio EPA  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: Mark Budge

and to:

Ohio EPA  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Jim Kavalec, Manager  
Compliance and Enforcement Section

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

## **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent 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.

**ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**



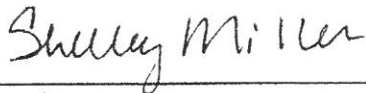
\_\_\_\_\_  
Craig W. Butler  
Director



\_\_\_\_\_  
Date

**AGREED:**

**Gerken Materials, Inc.**



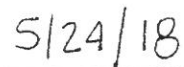
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Signature



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Printed or Typed Name



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Title



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Date