



Missouri  
Department of  
Natural Resources

**MEMORANDUM**

DATE:

TO: Missouri Air Conservation Commission

THROUGH: Alan J. Reinkemeyer, Acting Director  
Division of Environmental Quality

FROM: Kyra L. Moore, Director  
Air Pollution Control Program

SUBJECT: Attorney General's Office Referral Request – Sabre Excavating Service

On November 18, 2011, the Missouri Department of Natural Resources' Air Pollution Control Program (APCP) received Sabre Excavation Service's Notification of Demolition dated November 15, 2011, for a demolition project at Old Cape Paint & Glass located at 501 Broadway & 117 North Middle in Cape Girardeau, Missouri. On November 22, 2011, the APCP sent a Notice of Receipt to Sabre Excavation Service which noted that the solid waste statute at RSMo., 260.210 (7) requires that demolition waste shall be disposed of in a demolition or sanitary landfill or other authorized sites as provided under state rule. It is important to note that these actions signify compliance with the Missouri State Air Conservation Commission Regulation 10 CSR 10-6.080, "*Emission Standards for Hazardous Air Pollutants*," which adopts, by reference 40 CFR Part 61, Subpart M, "*National Emission Standards for Asbestos*."

On December 21, 2011, the Missouri Department of Natural Resources' Southeast Regional Office (SERO) observed open burning of demolition waste from this demolition project as a means of disposal on property owned by Sabre Excavating Service located on County Road 651 in Cape Girardeau County. This is a violation of Missouri State Air Conservation Commission Regulation 10 CSR 10-6.045, "*Open Burning Requirements*."

The SERO issued NOV #SER 2011122714165136 to document the violation.

On February 17, 2012, the department's APCP proposed a settlement via certified mail to Sabre Excavating Service.

On February 24, 2012, a representative of Sabre Excavating Service contacted the APCP via telephone. The representative agreed to submit a written response. The APCP did not receive a written response from Sabre Excavating Service.

On March 13, 2012, the APCP sent a second letter via certified mail to provide a final opportunity for settlement prior to referral.

On April 6, 2012, a representative of Sabre Excavating Service contacted the APCP via telephone. The owner, Mr. David Renshaw, stated that he did receive the second settlement offer letter and he did submit a response letter to the first settlement offer letter. Mr. Renshaw refused to submit a counter offer at this time. APCP staff told him that the case would be referred to the Attorney General's Office.

In light of failure to resolve the violations with conference, conciliation, and persuasion, the Air Pollution Control Program is requesting authority to refer the case to the Attorney General's Office to institute a civil action in a court of competent jurisdiction on behalf of the Missouri Air Conservation Commission and Missouri Department of Natural Resources. I recommend approval of this action.

KLM:ewv

c: Todd Raney, Southeast Regional Office



Missouri  
Department of  
Natural Resources

**MEMORANDUM**

DATE:

TO: Missouri Air Conservation Commission

THROUGH: Alan J. Reinkemeyer, Acting Director  
Division of Environmental Quality

FROM: Kyra L. Moore, Director  
Air Pollution Control Program

SUBJECT: Attorney General's Office Referral Request – Mr. Daniel Jensen

This file has been a joint case between the Missouri Department of Natural Resources' Solid Waste Management Program (SWMP) and the Air Pollution Control Program (APCP). The lead for conference, conciliation, and persuasion (CC&P) has been with SWMP.

On April 4-7, 2011, the department's Northeast Regional Office (NERO) received a report of improper disposal of regulated waste (approximately 30 cubic yards) from a demolished trailer at the property of 3574 Highway 79 in New London, Pike County, Missouri. The department investigated the report and issued a Letter of Warning (LOW) to Mr. Daniel Jensen, property owner, for the improper disposal. The LOW required Mr. Jensen to properly dispose of the demolition waste at a landfill and obtain receipts verifying proper disposal. On June 22, 2011, NERO conducted a follow-up investigation that revealed Mr. Jensen falsified documents in an attempt to show false compliance for taking the waste to a landfill. The follow-up investigation also revealed that Mr. Jensen illegally open burned some of the demolition waste after the department had informed Mr. Jensen of the open burning requirements. On June 30, 2011, the department issued NOV #NER10073642 for a solid waste violation and NOV #NER10193714 for a violation of the Missouri Air Conservation Law and its implementing air regulation, 10 CSR 10-6.045, "*Open Burning Requirements.*" The following summary documents CC&P efforts undertaken by the department's SWMP.

On July 15, 2011, the SWMP wrote a letter to Mr. Jensen advising him that the SWMP was offering to settle both violations (solid waste violation and air violation).

On August 19, 2011, the SWMP contacted Mr. Jensen by telephone. Mr. Jensen admitted to burning some of the regulated waste and agreed not to burn anymore. Mr. Jensen explained that he was going

through some difficult times but said he could have the civil penalty amount and complete the cleanup within 45 days.

On October 28, 2011, the SWMP wrote a letter that requested Mr. Jensen submit a written progress update. The SWMP received no response.

On January 27, 2012, the SWMP wrote Mr. Jensen a penalty demand letter and requested a response. Again, the department received no response.

On July 24, 2012, the SWMP attempted to conduct a site visit for an update. However, SWMP could not make contact with Mr. Jensen. The gate to the property was locked and the telephone service was disconnected.

On August 9, 2012, the SWMP attempted to contact Mr. Jensen by mailing him a final letter requesting that he contact the SWMP to resolve the matter. Mr. Jensen failed to respond to SWMP's request.

On September 25, 2012, the SWMP emailed the APCP that they received approval to refer the solid waste violation to the Attorney General's Office to institute a civil action.

In light of failure to resolve the violations with conference, conciliation, and persuasion, the Air Pollution Control Program is requesting authority to refer the case to the Attorney General's Office to institute a civil action in a court of competent jurisdiction on behalf of the Missouri Air Conservation Commission and Missouri Department of Natural Resources. I recommend approval of this action.

KLM:cjv

c: Mr. Jacob Cross, Northeast Regional Office  
Mr. Todd Schneider, Solid Waste Management Program



Missouri  
Department of  
Natural Resources

**MEMORANDUM**

DATE:

TO: Missouri Air Conservation Commission

THROUGH: Alan J. Reinkemeyer, Acting Director  
Division of Environmental Quality

FROM: Kyra L. Moore, Director  
Air Pollution Control Program

SUBJECT: Attorney General's Office Referral Request – Mr. Mark Gerlach  
d/b/a Gerlach Roofing

Gerlach Roofing in Jefferson City, Cole County, Missouri operates a roofing company that generates demolition waste. On January 18, 2012, the Missouri Department of Natural Resources' Northeast Regional Office (NERO), received a report regarding the open burning of demolition debris at Mr. Mark Gerlach, d/b/a Gerlach Roofing's property located at Lake Carmel in Brazito, Cole County, Missouri. The department concluded that open burning and dumping of construction and demolition waste had occurred. Open burning of demolition waste as a means of disposal is a violation of Missouri Air Conservation Regulation 10 CSR 10-6.045, "*Open Burning Requirements*." The department issued Notice of Violation (NOV) #NER2012021510523912 on January 18, 2012, to Mr. Mark Gerlach of Gerlach Roofing to document this violation. The department also issued NOV #NER2012020915495694 to document the improper disposal of these wastes in violation of Missouri Solid Waste Management Law. The department's Air Pollution Control Program (APCP) and the department's Solid Waste Management Program (SWMP) had arranged to manage the case on a joint track, with the APCP taking the lead.

On March 8, 2012, Mr. Gerlach telephoned the APCP and explained some of the circumstances around the Air NOV. Mr. Gerlach stated that he would submit a written response explaining the circumstances. The APCP didn't receive Mr. Gerlach's written response.

On May 14, 2012, the APCP proposed a settlement via certified mail. The letter came back to the APCP, marked unclaimed.

On May 31, 2012, staff from the APCP attempted to contact Mr. Gerlach via telephone. This attempt was unsuccessful but staff was able to leave a voice mail.

On June 5, 2012, APCP staff telephoned Mr. Gerlach again and was able to make contact. Mr. Gerlach was informed of the letter sent on May 14, 2012. Mr. Gerlach confirmed that the address was accurate. He stated that he had been out of town and requested that the APCP mail the letter again. APCP staff agreed to mail the letter a second time and did so on June 8, 2012. Again, the letter came back to the APCP, marked unclaimed.

On June 19, 2012, APCP staff telephoned Mr. Gerlach and was able to leave a voice mail. Mr. Gerlach came by the APCP and personally picked up the settlement offer letter. Mr. Gerlach telephoned the APCP later that day and stated that he would submit his response in writing to the APCP.

On July 25, 2012, APCP staff contacted Mr. Gerlach via telephone. Staff informed him that the APCP hadn't received his written response that he committed to sending. Mr. Gerlach stated that he would personally hand deliver his response to the APCP by July 30, 2012. As of this date, neither the APCP nor the SWMP has received his written response.

On September 17, 2012, the APCP sent a letter to Mr. Gerlach to provide a final opportunity for an out-of-court settlement prior to referral. Mr. Gerlach failed to respond by the benchmark date that was stated in the letter dated September 28, 2012.

The SWMP is referring their portion of the case to the Attorney General's Office.

The APCP is requesting authority to refer the case to the Attorney General's Office as well to institute a civil action in a court of competent jurisdiction on behalf of the Missouri Air Conservation Commission and Missouri Department of Natural Resources. I recommend approval of this action.

ELW:vs

c: Mr. Daniel Brownawell, Northeast Regional Office  
Mr. Dan Fester, Solid Waste Management Program



Missouri  
Department of  
Natural Resources

**MEMORANDUM**

DATE:

TO: Missouri Air Conservation Commission

THROUGH: Alan J. Reinkemeyer, Acting Director  
Division of Environmental Quality

FROM: Kyra L. Moore, Director  
Air Pollution Control Program

SUBJECT: Attorney General's Office Referral Request – Precision Lumber and Pallet (PLP)

On August 16, 2012, the Missouri Department of Natural Resources' Air Pollution Control Program inspected the property on Rt. 2 Box 2715, Birch Tree, Missouri, which is adjacent to PLP, located on Highway 60 in Teresita, Missouri. The inspection revealed evidence of particulate matter (PM), in the form of sawdust, from PLP had crossed the property boundary of the premises of origin. This is a violation of the Missouri Air Conservation Law and implementing regulation, 10 CSR 10-6.170, "*Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin.*" Therefore, the department issued Notice of Excess Emissions (NOEE) #0812CJ04 on August 24, 2012, and mailed it with a cover letter on September 5, 2012. The department allowed 15 days for PLP to provide a response, as required by 10 CSR 10-6.050, "*Start-Up, Shutdown, and Malfunction Conditions.*" The department received a written response from PLP on September 24, 2012. The department determined the excess emissions were not due to equipment/process start-up, shutdown, and/or malfunction. On October 25, 2012, the department notified PLP that NOEE #0812CJ04 was upgraded to Notice of Violation (NOV) #0812CJ04. A summary of Conference, Conciliation and Persuasion for PLP is outlined as follows.

On August 31, 2010, as a result of an inspection of the facility, the department issued a Letter of Warning (LOW) for PM (sawdust) crossing the property boundary of origin and required a compliance plan within 30 days of receiving the LOW. The department also required implementation of the compliance plan within 60 days such that it prevented PM from crossing the property boundary of origin.

On January 21, 2011, the department conducted a compliance inspection. During the inspection, the department concluded the facility failed to comply with 10 CSR 10-6.170, "*Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin*" and issued NOEE #012811JD1SE for PM traveling beyond the premises of origin.

On March 7, 2011, the department determined the excess emissions were not due to equipment/process start-up, shutdown, and/or malfunction and upgraded NOEE #012811JD1SE, to NOV #012811JD1SE.

On March 15, 2011, the department issued and mailed NOV #0311CJ01 for failure to submit a construction permit application as required by 10 CSR 10-6.060, "*Construction Permits Required.*" The facility has potential emissions for PM10 in amounts that are greater than the de minimis level.

On April 11, 2011, the department received a letter from PLP that outlined a compliance plan for PLP to achieve compliance with the regulation. To bring the facility into compliance with the regulation, PLP communicated that they divided a building and separated the fines from woodhog material. They installed a tarpaulin cover over the opening to the fines (PM); installed a mesh tarpaulin cover over the opening to the mulch shed (woodhog material); and would install/extend the west side and north side walls of the mulch shed to help prevent the wind from blowing sawdust.

On April 12, 2011, the department received an emailed concern from a neighbor that stated the sawdust was bad and causing sickness in the family. The neighbor also expressed concern that some of the sidewalls installed for PM control had been taken down or opened up.

On April 13, 2011, the department conducted a site visit at the neighbor's property to investigate the neighbor's concerns. The department witnessed that PM (sawdust) had settled on the neighbor's property from PLP. There was a layer of sawdust on the neighbor's side of the property line. After the department visited the neighbor's home, the department attempted to visit PLP, however PLP had closed for the day.

On April 19, 2011, as a result of the April 13, 2011, investigation, the department issued NOV#0411CJ01 for violation of 10 CSR 10-6.170, "*Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin.*"

On April 26, 2011, the department issued a settlement offer to accompany NOV#0411CJ01.

On May 2, 2011, PLP's owner, Mr. Glen Miller, telephoned the department. He said he had stopped the process of pneumatically discharging the larger chips to the building on the property line. He hired three people to manually do what that apparatus would do. He said he would remove the ramp (made from sawdust) near the property line that he used for loading his trucks for wood waste removal. The department requested that he respond in writing to the issues cited in NOV#0411CJ01 and accompanying settlement offer.

On May 20, 2011, the department received a letter from PLP. Mr. Miller explained that the sawdust on the neighbor's property was old sawdust. He offered to clean it up to see if new sawdust was crossing the property line. He also stated that by turning off the woodhog and hiring three more employees (21 total employees) he solved the problem.

On May 26, 2011, the department spoke with the neighbor and Mr. Miller. They said they would work out a schedule to work with each other to remove the layer of old sawdust near the property line. The department elected to hold off from pursuing the settlement offer to see if the violation was resolved.

On June 27, 2011, the neighbor emailed the department and mentioned PLP was getting a new cyclone since the old one had holes in it. The neighbor wrote that the PM leaving the property that summer has been a little less than the previous summer.

On July 18, 2011, the department questioned Mr. Miller to the status of his final processes configuration for his construction permit. He said that, even though he stopped the use of the chipper, he wanted to keep it in the construction permit application as a future process operation. He said in a year or two he wanted to build another building for unloading lumber inside. It was suggested that he inform the permit section of any changes to his processes.

On January 24, 2012, the neighbor emailed that while the PM had been less than the year before, there was still some PM traveling beyond the property line of origin.

On July 20, 2012, the neighbor emailed the department that the sawdust in the air was very bad the day before. She did not think the mill was even running but that the sawdust was blowing from building rooftops and storage piles.

On August 16, 2012, the department visited PLP to discuss the construction permit application. While the visit was for a construction permit, the department did observe large piles of sawdust on top of buildings and on the ground. The department also visited the property of the adjoining neighbor. The department observed continued evidence of PM leaving the property of origin. The neighbor showed an air conditioner repair bill which indicated the problem was from accumulated sawdust.

On September 5, 2012, as a result of the observations, the department issued NOEE #0812CJ04 for excess emissions emitted beyond the property boundary line of origin and allowed 15 days for PLP to submit a written response to whether the PM exceedance was due to a start-up, shutdown, and/or malfunction.

On September 24, 2012, the department received a response from PLP explaining that the excess emission was from dry weather and not being able to fix the cyclone or make other repairs. They reported they would fix the cyclone as soon as they could get a welder to the location.

On October 25, 2012, the department determined the excess emissions were not due to equipment/process start-up, shutdown, and/or malfunction and upgraded NOEE #0812CJ04, to NOV #0812CJ04. The department mailed a letter that required immediate action toward compliance and restated its settlement offer.

Missouri Air Conservation Commission  
Page Four

On November 7, 2012, the department received a telephone call from PLP. PLP stated they were trying to get some work done on their cyclone and they were going to stop operating a couple of their processes. The department required PLP to submit all communication in written detail.

In light of failure to resolve the violations with conference, conciliation, and persuasion, the Air Pollution Control Program is requesting authority to refer the case to the Attorney General's Office to Institute a civil action in a court of competent jurisdiction on behalf of the Missouri Air Conservation Commission and Missouri Department of Natural Resources. I recommend approval of this action.

KLM:cjv

Attachment

c: Ms. Amy Baker, Southeast Regional Office  
203-0031