

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: MIKE BARRETT and JODY BARRETT; Polk County, Iowa.	ADMINISTRATIVE ORDER NO. 2008-SW-03
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TO: Mike Barrett
4200 SE 23rd St.
Des Moines, IA 50320-2630

Jody Barrett
4200 SE 23rd St.
Des Moines, IA 50320-2630

I. SUMMARY

This Administrative Order (Order) is issued by the Iowa Department of Natural Resources (Department) to Mike Barrett and Jody Barrett, jointly and severally in order to resolve solid waste disposal violations. Pursuant to this Order, Mike Barrett and Jody Barrett shall properly dispose of all solid waste and pay an administrative penalty in the amount of \$6,200.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bill Gross
IDNR Field Office #5
401 S.W. 7th, Suite I
Des Moines, IA 50309
Ph: 515-725-0268

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Admin. Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Jody Barrett is the owner of a property located at 607 SE 21st Court, Des Moines, Iowa (the subject property). Mike Barrett arranged for the purchase of the business located at 607 SE 21st Court from Bill Reed and Heartland Mutual Service LLC, through his wife, in order to operate a wood chipping business at the site.

2. On February 27, 2006, the Department received a complaint alleging illegal solid waste disposal by Bill Reed at the subject property. The complaint was investigated by Environmental Specialist Senior Bill Gross on March 3, 2006. The site was found to be filled with approximately 10-foot tall piles of wooden boards and wood chips. There were also plastic pallets and brush. The road frontage to Scott Ave. was littered with appliances, furniture, tires and miscellaneous solid waste. Mr. Gross visited Bill Reed's neighboring business on this date. Mr. Reed indicated that the property owner had placed the materials on site with the intent to grind the wood up for mulch. On this date, Mr. Gross checked the Polk County property records and determined that Jody Barrett is the listed owner of the site.

3. On March 9, 2006, Mr. Gross spoke with Mike Barrett. Mr. Barrett indicated that he had purchased the property from Bill Reed and Heartland Mutual Service LLC. Mr. Barrett indicated that he intended to operate a wood chipping business but that he had been unable to obtain the promised pallets. Mr. Barrett indicated that he intended to grind up the wood that was on-site. Mr. Barrett further indicated that the property would be obtained by the City of Des Moines for the proposed Martin Luther King Parkway right-of-way and that he had been required by the City to clean up the Scott Avenue roadside.

4. On March 16, 2006, a Notice of Violation was issued to Mike & Jody Barrett. The Notice provided a cleanup deadline of June 1, 2006.

5. Throughout the summer of 2006, Mr. Gross repeatedly visited the subject property. Mr. Gross verbally extended the cleanup deadline to June 15, 2006.

6. On September 1, 2006, a second Notice of Violation was issued to Mike & Jody Barrett. The Notice indicated that very little cleanup had occurred at the subject property and extended the cleanup deadline to October 1, 2006.

7. On September 5, 2006, the City of Des Moines issued a violation letter to Mike & Jody Barrett requiring the cleanup of the subject property within 30 days of the date of receipt of the letter.

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8. On October 12, 2006, Mr. Gross met with Mike Barrett. On this date, Mr. Barrett agreed to a compliance schedule. The schedule was formalized in a letter issued by the Department on October 13, 2006 and required:

- a. Removal of a trailer containing oil filters by November 1, 2006;
 - b. The immediate clearing of fire lanes through the subject site;
 - c. Removal of one quarter of the solid waste by December 31, 2006;
 - d. Removal of half of the solid waste by March 1, 2007;
 - e. Removal of three fourths of the solid waste by May 1, 2007; and
 - f. Removal of all solid waste by June 1, 2007.
- g. Additionally, records of removal and proper disposal were required to be maintained.

The letter also informed Mr. Barrett that failure to comply with the agreed upon schedule would result in the referral of this matter for enforcement action.

9. On January 9, 2007, a Notice of Violation was issued to Mike Barrett due to the failure to make any appreciable progress toward compliance.

10. On June 1, 2007, Mr. Gross inspected the subject property. Some fire lanes had been cleared at the site, but little or no waste materials had been removed.

11. On August 29, 2007, Mike Barrett informed the Department that the subject property had been sold at tax sale and that he no longer owned the site.

12. On February 2, 2008, the Department reviewed the records of the Polk County Assessor and the Polk County Treasurer. These records indicate that, while a tax sale did occur, no tax deed has been issued and the property remains titled in the name of Jody Barrett.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC Chapters 100-121.

2. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.

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V. ORDER

The Department hereby orders Mike Barrett and Jody Barrett to:

1. By August 1, 2008, remove all solid waste from the above-described property. Disposal records shall be provided to the Department within seven days of disposal; and
2. Pay an administrative penalty in the amount of \$6,200 within 30 days of the issuance of this Order unless the Order is appealed as provided in Part VII, below. This penalty is assessed jointly and severally to Mike Barrett and Jody Barrett.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Order is determined as follows:
 - a. Economic Benefit. Mike Barrett and Jody Barrett have achieved an economic benefit from their illegal conduct. Costs avoided include disposal fees, labor, and hauling costs. The cost of processing and disposal of the wood wastes at the subject property is estimated to be \$1,200. The cost of disposal of other wastes, including oil filters is estimated to be \$1,000. Based upon these facts, \$2,200 is assessed for this factor.
 - b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The illegal open dumping of solid waste threatens the groundwater of the state. This site also poses a significant risk of fire due to the volume of wood wastes and the failure to keep fire lanes open and accessible. Based on the above considerations, \$2,000 is assessed for this factor.

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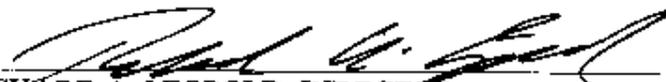
c. Culpability. The wood wastes described in this Order were accumulated speculatively for business purposes. Mike Barrett and Jody Barrett have been provided notice and the opportunity to correct the identified violations without the imposition of a penalty. The Department accepted a compliance schedule of approximately 8 months in length. Mike Barrett and Jody Barrett have made little to no effort to achieve compliance. Based upon these factors, \$2,000 is assessed for this factor.

VII. APPEAL

Pursuant to Iowa Code section 455B.308 and 561 IAC 7.5(1), as adopted by reference at 567 IAC 7.1, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of issuance of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 5 day of
Feb., 2008

Field Office #5; Jon Tack; VI, C.