

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

<p>IN THE MATTER OF:</p> <p>BARKER COMPANY, LIMITED</p> <p>Facility ID# 04-01-028 Appanoose County</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2009-AQ-21</p>
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TO: Barker Company, Limited
Richard Dietzman, Plant Manager
1605 O'Briant Street
Centerville, Iowa 52544

Barker Company, Limited
Pat McMahon, Registered Agent
PO Box 478
Keosauqua, Iowa 52565

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Barker Company, Limited (Barker) for the purpose of resolving air quality violations at its Centerville plant. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jeff Theobald, Field Office #5
Iowa Department of Natural Resources
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309-4611
Phone: 515/725-0373

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Barker has a facility (DNR ID 04-01-028) located at 22450 Dewey Road, in Centerville, Iowa. This is one of two Barker facilities in Iowa, the other being located in Keosauqua. The company has been in operation since 1982 when current owner Jack McMahon purchased the refrigeration division of Barker Products Corporation. Barker now manufactures refrigerated, non-refrigerated and hot display cases for supermarkets, convenience stores and the food service industry. Barker's product lines include bakery, choice, dairy/beverage, deli, floral, food bar, island, meat/seafood and produce specialty merchandisers.

CURRENT VIOLATIONS

2. On February 28, 2007, Barker received modified permits for five of its emissions units in Centerville. The modified permits allowed Barker to move this equipment from its plant at 1605 O'Brient Street in Centerville to a new location at 22450 Dewey Road in Centerville. The new location is about ¾ mile southwest of the original plant site. The re-permitted equipment included Emission Points 1, 4, 7, and 9.

3. Barker continues to operate equipment at both locations in Centerville. DNR considers the Centerville operations to be one facility for purposes of air quality permitting.

4. The Centerville sites were inspected by DNR Field Office No. 5 on October 31 and November 3, 2008. As a result of these inspections, DNR determined the following:

a. **1605 O'Brient Street:** Barker had failed both to maintain required records and to comply with permitted limits. Emission Point 5 (Auto Spray Booth #1) and Emission Point 6 (Auto Spray Booth #2) also contained spray guns capable of spraying at a maximum of 8 gallons per hour, in violation of the permitted limit of 2.34 gallons per hour, although actual usage amounts were under the permitted limit. Also, a glue booth installed at the O'Brient site had no construction permit.

b. **22450 Dewey Road:** Barker failed to comply with the requirements of its construction permits. Barker failed to maintain required records for Emission Point 4 (Cure

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Oven) by keeping records for powder coat usage in gallons rather than pounds per 12-month rolling period. For Emission Point 7 (Adhesive Spray Booth), the MSDS sheets on site indicated that one of the glues used in the Spray Booth was over the permit limit of 2.5 pounds-per-gallon solids. Also, the two spray guns located in this Adhesive Spray Booth were capable of spraying a maximum of 16.8 gallons per hour, in violation of the permitted limit of 12 gallons per hour, although actual usage amounts were under permitted limits. Finally, records of cleaner usage were not being kept for Emission Point 11 (Wash Bay), as required.

5. On November 18, 2008, DNR issued a Notice of Violation letter (NOV) to Barker for the violations described above. Barker responded to the NOV on December 15, 2008.

6. On December 16, 2008, Barker submitted a permit application for the glue booth and four applications for permit amendments to resolve construction permit limit violations cited in the November 18, 2008, NOV.

7. On February 16, 2009, DNR issued the glue booth permit and the four amended permits.

ENFORCEMENT HISTORY

8. On January 29 and February 16, 2001, DNR's Field Office No. 5 inspected the Barker facility in Centerville and found the following deficiencies:

- Paint and solvent usage was not being totaled on a monthly basis.
- Monthly adhesive usage for Emission Point 7 was being recorded in pounds, but the permit limit required that it be measured in gallons.
- A record of the Hazardous Air Pollutant (HAP) content in the adhesive used in Emission Point 7 was not available.
- Stacks for Emission Points 1, 4, 7 & 10 were not constructed as specified in their respective permits.
- A record of filter maintenance was not being kept for Emission Points 2, 3, 5, 6, 7 & 9.

9. In a letter dated February 28, 2001, DNR notified Barker of these deficiencies and required a response by May 1, 2001.

10. On January 22, 2003, Dick Dietzman of Barker called Bill Gross of DNR Field Office No. 5 to ask whether a permit change was necessary for modifying a cure oven stack. Bill Gross instructed Mr. Dietzman that Barker should have requested a permit amendment.

11. On March 6, 2003, DNR issued a NOV to Barker for not obtaining a construction permit prior to the modification of the cure oven.

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12. On January 24, 2005, DNR issued another NOV to Barker for several recordkeeping violations. The letter required that the missing recordkeeping data be submitted by March 15, 2005. The violations included:

- Not calculating the rolling 12-month totals on a monthly basis, as required by the permits, for total gallons of surface coating material, solvents and adhesive compounds attributable to the operation of Emission Points 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.
- Not calculating the rolling 12-month totals on a monthly basis, as required by the permits, for each individual HAP and the total HAPs attributable to the operation of these same Emission Points.
- For these same Emission Points, not tracking the individual HAP records in pounds of individual HAP usage each day.

13. On March 4, 2005, Barker submitted its usage records.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Pursuant to Iowa Code sections 455B.133 and 455B.134(3)(a), 567 IAC 22.1(1) requires that a person who constructs, installs, reconstructs or alters equipment or control equipment must first obtain an air quality construction permit from DNR, unless an exemption applies. No exemption applies to the units mentioned above. The above facts indicate a violation of these provisions.

3. Pursuant to Iowa Code section 455B.133, 567 IAC 22.3(3) authorizes permits to be issued subject to written conditions. Barker has failed both to maintain required records and to comply with permitted limits.

V. ORDER

THEREFORE, the DNR orders and Barker agrees to do the following:

1. Properly maintain records and comply with all permit conditions at all times;
2. Obtain construction permits before installing, modifying, or relocating emission equipment; and
3. Pay a penalty of \$4,300.00 within 30 days of the date the Director signs this administrative consent order.

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VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty of \$4,300.00. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Barker’s failure to comply with construction permitting requirements has prevented the DNR from evaluating the environmental impact of Barker’s actions. In addition, Barker enjoyed a cost savings by not keeping required records and by failing to comply with other permit conditions or applying for modified permits. Therefore, \$300.00 is assessed for this factor.

Gravity of the Violation – Recordkeeping is a fundamental means to confirm compliance with air quality standards. Barker has had numerous recordkeeping deficiencies over a multi-year period. Further, these recordkeeping and other permitting violations threaten the integrity of Iowa’s air pollution control program. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Barker has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. It also has a duty to comply with the terms of its permits. Barker has been cited several times for not keeping correct records, for failing to comply with permit limits, and for failing to obtain a required construction permit. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Barker. For this reason, Barker waives its rights to appeal this order or any part thereof.

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VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 28 day of
July, 2009.

 V.P. of Manuf.

For Barker Company, Limited

Dated this 22 day of
July, 2009.

Facility # 04-01-028; Anne Preziosi; Jeff Theobald; EPA; VII.A.1, VII.B.2a, VII.B.2c(3)