

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

<p>IN THE MATTER OF:</p> <p><b>Evert Van Maanen Sioux County, Iowa</b></p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align:right">NO. 2012-AQ- 03 NO. 2012-SW- 06</p>
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TO: Evert Van Maanen  
2711 Grant Avenue  
Doon, Iowa 51235

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Evert Van Maanen for the purpose of resolving the air quality and solid waste disposal violations which occurred at Mr. Maanen's property in Sioux County, Iowa. 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:      Relating to legal requirements:**

Don Cunningham, Field Office 3 Iowa Department of Natural Resources 1900 N. Grand-Gateway North, Suite E17 Spencer, Iowa 51301-2200 Phone: 712/262-4177	Kelli Book, Attorney for the DNR Iowa Department of Natural Resources 7900 Hickman Road, Suite 1 Windsor Heights, Iowa 50324 Phone: 515/281-8563
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**Payment of penalty to:**

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

**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; 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

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IV, Part 1 (solid waste), and the rules adopted 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, DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. On October 19, 2011, DNR Field Office 3 received a complaint alleging that Evert Van Maanen had piled approximately five large rear tractor tires on a burn pile at his property located at 2711 Grant Avenue; Doon, Iowa (NE 1/4, Section 6, Lincoln Township, Sioux County, Iowa).

2. In November 2011, Don Cunningham, DNR Field Office 3 environmental specialist, made several attempts to talk to Mr. Van Maanen about the complaint. Mr. Cunningham made at least three visits to the property in November 2011. During one of the visits, Mr. Cunningham observed the burn pile with tractor tires and various other solid wastes, including furniture on the pile. Mr. Cunningham left his business card with Mr. Van Maanen's son and asked that Mr. Van Maanen call him.

3. On December 30, 2011, Mr. Cunningham met with Mr. Van Maanen at the property. Mr. Van Maanen stated that he remembered receiving Mr. Cunningham's business card, but forgot to call Mr. Cunningham. Mr. Van Maanen stated that he had burned the pile with the tires and other solid waste in late November 2011. He stated that he was unaware that burning the tires was a violation of the regulations. Mr. Cunningham observed the steel band remnants from the burning of several tires.

4. On January 9, 2012, DNR issued a Notice of Violation letter to Mr. Van Maanen for the open burning and improper solid waste disposal of the tires. The letter informed Mr. Van Maanen that the matter was being referred for further enforcement.

**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. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). On December 30, 2011, DNR Field Office 3 personnel observed the steel band remnants from tires that had been burned at Mr. Van Maanen's property. Mr. Van Maanen admitted that he burned the pile with the

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tires in late November 2011. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. On December 30, 2011, DNR Field Office 3 personnel observed the steel band remnants from tires that had been burned at Mr. Van Maanen's property. Mr. Van Maanen admitted that he burned the pile with the tires in late November 2011 rather than disposing of them properly at a permitted landfill. The above facts demonstrate noncompliance with this provision.

#### V. ORDER

THEREFORE, it is hereby ordered and Evert Van Maanen agrees to do the following:

1. Evert Van Maanen shall immediately cease all open burning unless the burning is exempted by regulation;
2. Evert Van Maanen shall immediately cease all improper waste disposal; and
3. Evert Van Maanen shall pay a penalty of \$1,000.00 within 30 days of the date the Director signs this administrative consent order.

#### 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.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

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 rule, the 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 \$1,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

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Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper solid waste disposal regulations by the improper open burning and disposal of the tires has allowed Mr. Harrington to save time and money. It is estimated that Mr. Van Maanen avoided at least \$100.00 in landfill fees. Based on the above considerations, \$100.00 is assessed for this factor.

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 that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of tires results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Therefore, \$600.00 is assessed for this factor.

Culpability - Evert Van Maanen has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Based on the above considerations, \$300.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

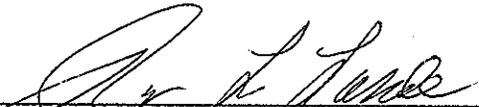
This administrative consent order is entered into knowingly and with the consent of Evert Van Maanen. For that reason, Evert Van Maanen waives the right to appeal this administrative consent order or any part thereof.

## VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an

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administrative order or referral to the Attorney General to obtain injunctive relief  
and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 09<sup>th</sup> day of  
February, 2012.

  
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Evert Van Maanen

Dated this 1<sup>st</sup> day of  
February, 2012.

Barb Stock (Con 10-6 Sioux County); Kelli Book; DNR Field Office 3; VI.C and  
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