

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

**IN THE MATTER OF:**

**MARVIN AND SALLY PORSCH D/B/A  
HAMLIN IRON & METAL**

Audubon, IA

**ADMINISTRATIVE CONSENT ORDER  
NO. 2009-AQ- 12  
NO. 2009-SW- 08**

TO: Jo Porsch  
Hamlin Iron & Metal  
2334 Heron Place  
Hamlin, Iowa 50117

Sally Porsch  
Hamlin Iron & Metal  
2334 Heron Place  
Hamlin, Iowa 50117

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Marvin "Jo" Porsch and Sally Porsch d/b/a Hamlin Iron and Metal for the purpose of resolving an issue pertaining to the open burning of combustible materials and improper solid waste disposal. 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:**

Dan Stipe, Field Office 4  
Iowa Department of Natural Resources  
1404 Sunnyside Lane  
Atlantic, Iowa 50022  
Phone: 712/243-1934

**Relating to legal requirements:**

Jon Tack, Attorney for the DNR  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319  
Phone: 515/281-5145

**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**

This administrative consent order is issued 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 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.

**III. STATEMENT OF FACTS**

1. Jo and Sally Porsch owned and operated Hamlin Iron & Metal located at 4998 Hwy 44 Hamlin, Iowa. They have sold the salvage yard property and are moving their salvage operation to the site where their residence is located in Audubon County. The Porsch's residence is located at Section 8, T79N, R35W, Audubon County (the site).

**PAST ENFORCEMENT HISTORY**

2. On September 13, 2002, DNR Field Office 4 received a complaint regarding concerns about a tire stockpile at Hamlin Iron & Metal. Dan Stipe, Environmental Program Supervisor for DNR, investigated the complaint regarding the tire pile. Mr. Stipe estimated that there were between 500 and 1,000 tires onsite. Mr. Stipe requested additional information from Hamlin Iron & Metal concerning whether or not they had a Department of Transportation (DOT) license. Operations with a DOT license may have up to 3,500 tires onsite. During the investigation, Mr. Stipe also discovered that the facility did not have a storm water permit.

3. On September 19, 2002, the Iowa DOT faxed Mr. Stipe information concerning Hamlin Iron & Metal. Based upon the information from the Iowa DOT, it was determined that Hamlin Iron & Metal had the requisite license and was in compliance with the tire regulations.

4. On September 20, 2002, Mr. Stipe sent a letter to Mr. Porsch requiring him to obtain a storm water permit by November 30, 2002. Mr. Stipe also included with the letter copies of DNR's open burning and solid waste regulations.

5. On June 16, 2003, DNR issued storm water permit no. IA-6351-6158 to Hamlin Iron & Metal.

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**CURRENT ENFORCEMENT HISTORY**

6. On May 5, 2008, DNR Field Office 4 received a complaint alleging that Mr. Porsch was burning tires and other solid wastes in a burn pit located at the site. The complainant alleged that Mr. Porsch was bringing solid wastes from Hamlin Iron & Metal to the Site and burning them. Mr. Stipe investigated the complaint. Mr. Porsch admitted to burning tires at both the salvage yard and at the Site. Mr. Porsch stated that most of the tires were removed by GreenMan Technologies, Inc. and Alters, companies engaged in collecting and processing scrap tire. Mr. Porsch denied Mr. Stipe access to the burn pit at the Site.

7. Subsequently, Mr. Stipe contacted both GreenMan Technologies and Alters. Representatives from both companies stated they were not aware of collecting any tires from the Porschs' salvage operation. Mr. Stipe returned to the Porschs' residence and informed Mr. Porsch of the above. Mr. Porsch contacted Alters and the Alters representative stated that there were a few tires in a dumpster received from Mr. Porsch. A representative of GreenMan Technologies, Inc. contacted Mr. Stipe by telephone while he was onsite and stated they had found records that GreenMan Technologies had removed some tires from the Porschs' property in 2005 and 2006, but none recently. Because this left many tires unaccounted for, Mr. Stipe again asked to see the alleged burn pit. Again, Mr. Porsch denied Mr. Stipe access.

8. On May 6, 2008, Dan Olson, Field Office 4 staff, and Mr. Stipe obtained a search warrant and returned to the Porschs' residence to investigate the burn site. Mr. Olson and Mr. Stipe observed burned animal carcasses, the remnants of several tires, and other miscellaneous solid wastes. Mr. Stipe informed Mrs. Porsch that further enforcement action would be taken. Subsequently, Mr. Stipe and Mr. Olson visited Hamlin Iron & Metal and also informed Mr. Porsch that further enforcement action would be taken.

9. On May 7, 2008, Mr. and Mrs. Porsch were issued a Notice of Violation letter for open burning and improper solid waste disposal violations.

10. Mr. and Mrs. Porsch have been denied a request for rezoning and are unlikely to operate a salvage yard in the future.

**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 20-34 relating to air quality.

2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). On May 6, 2008, DNR personnel observed burned animal carcasses, the remnants of several tires, and other miscellaneous solid wastes at the Site. The

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burning does not fall under 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit 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. Mr. and Mrs. Porsch disposed of tires and other miscellaneous solid wastes by dumping the waste at the Site rather than recycling or disposing the waste at a sanitary landfill. The above facts demonstrate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Marvin and Sally Porsch agree to do the following:

1. Pay a penalty of \$750 in three payments of \$250 each, with the first payment being due on March 15, 2009 and the remaining payments being due on April 15<sup>th</sup> and May 15<sup>th</sup>, respectively;
2. Remove and properly dispose any remaining solid waste from the Site within 30 days or receiving this order; and
3. Submit copies of all disposal receipts to DNR Field Office 4 within 15 days of disposal.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of 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) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$750. The administrative penalty is determined as follows:

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Economic Benefit - Mr. and Mrs. Porsch have achieved an economic benefit from open burning and improper waste disposal. They have saved time, labor, and landfill costs by not timely and properly removing, transporting, and disposing of the solid wastes from the Site. The costs associated with proper disposal, including transportation, amounts to at least \$250. Therefore, \$250 is assessed for this factor.

Gravity - The improper disposal and burning of trade waste, including tires, plastics, and manufactured wood products releases harmful toxins into the air such as carbon monoxide, dioxin/furans, hydrochloric acid, volatile organic compounds, heavy metal and fine particulate. Open dumping also impacts the environment, the character of the neighborhoods, and the quality of life of local residents. The open burning and improper solid waste disposal violations threaten the integrity of the environmental regulations. There are multiple days of violation. Due to financial hardship, only \$250 is assessed for this factor.

Culpability - After a previous complaint investigation, Mr. Porsch was issued copies of DNR's open burning and solid waste regulations. Subsequently, Mr. and Mrs. Porsch were fully aware of the rules regarding illegal open burning and proper solid waste disposal. The violations documented herein constitute the willful violation of state law. There are multiple days of violation. Due to financial hardship, only \$250 is assessed for this factor.

Mitigating or Aggravating Factors - Mr. Porsch has been compliant with a previous investigation of his premises. However, he refused DNR staff access to the Site to investigate the latest complaint and DNR staff had to obtain a search warrant. Therefore, \$500.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Marvin and Sally Porsch. For that reason Marvin and Sally Porsch waive their rights to appeal this administrative consent order or any part thereof.

## VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. 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 administrative consent order.

