

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

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**IN THE MATTER OF:**

**James Bockoven  
d/b/a Lehigh Gas Service**

**REG. NO. 198916630**

**ADMINISTRATIVE ORDER**

**2016-UT- 04**

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**TO: James Bockoven  
Lehigh Gas Service  
141 Main Street  
Lehigh, IA 50557**

**James Bockoven  
1001 South 27th Street  
Fort Dodge, IA 50501**

**I. SUMMARY**

The Iowa Department of Natural Resources (Department) issues this Administrative Order (Order) to James Bockoven, d/b/a Lehigh Gas Service (Bockoven) to address underground storage tank (UST) violations at Lehigh Gas Service, 141 Main Street, Lehigh, Iowa. This order requires payment of an administrative penalty of \$3,000 to the Department and requires Bockover to permanently close the UST. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

David Miller  
Iowa Department of Natural Resources  
2300 15th Street SW, Box 1443  
Mason City, IA 50401  
Ph: 641/424-4073  
david.miller@dnr.iowa.gov

**Relating to legal requirements:**

Aaron Brees, Attorney  
Iowa Department of Natural Resources  
502 East 9th Street  
Des Moines, Iowa 50319-0034  
Ph: 515/725-8250  
aaron.brees@dnr.iowa.gov

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 503219-0034

**Appeal, if any, addressed to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 503219-0034

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## II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.476, which authorizes the Director of the Department to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (IAC) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

## III. STATEMENT OF FACTS

1. Mr. Bockoven is the owner of a gas station/convenience store, known as Lehigh Gas Service, located at 141 Main Street, Lehigh, Iowa (the facility). The facility includes a two compartment, 2,000 gallon UST.
2. 567 IAC 135.4(6) states that after December 31, 2011, a facility operating a UST must designate an operator trained at the Class A and B level, and must designate a Class C level operator who must be present onsite whenever the facility is in operation.
3. On February 1, 2012, Environmental Specialist Senior David Miller of Department Field Office 2 (FO2) visited the facility and reminded the clerk that compliance with the above cited rule was overdue. Mr. Miller left a package for Mr. Bockoven that included training enrollment information and a note that he should provide documentation of compliance by March 1, 2012. No response was received.
4. On May 23, 2013, Petroleum Marketing Managers Insurance Company (PMMIC), the insurer of Bockoven's UST, conducted an inspection of the facility. PMMIC notified Bockoven that he was not in compliance with operator training requirements and provided a July 30, 2013 deadline for documenting compliance.
5. On August 12, 2013, PMMIC sent an email to the Department providing notification of Bockoven's noncompliance.
6. On September 11, 2013, Mr. Miller visited the facility and spoke with Mr. Bockoven, who acknowledged that he was aware of the operator training requirement and understood that he had not complied with the law. Mr. Bockoven stated that he would have an employee take the next available Class A level training class and would ensure that an operator trained to at least the Class C level would be present whenever the facility was open.
7. On September 12, 2013, the Department issued a Notice of Violation to Bockoven, directing him to comply with the operator training requirements no later than the next available training session on October 4, 2013. Other violations were noted including a missing UST registration tag and failure to post emergency contact information.

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8. On November 4, 2013, the Department sent Bockoven a Letter of Inquiry directing him to comply with the operator training and other requirements by November 30, 2013. No response was received.
9. On December 12, 2013, Mr. Miller visited the facility and found no documentation of operator training. On January 27, 2014, Mr. Miller contacted PMMIC and confirmed that they had also not received any documentation of operator training for the facility.
10. On October 7, 2014, Paul Nelson of the Department's UST section sent Bockoven a letter noting that the Department had no record of current pollution liability insurance for the UST and that Bockoven still had not documented compliance with the operator training requirements. As of October 7, 2014, the UST was considered temporarily closed.
11. Following the above events, Bockoven failed to comply with the operator training and insurance requirements and subsequently closed the business. Bockoven has stated that the tank is empty, however cathodic protection has not been maintained as required, and the twelve month temporary closure period has been exceeded. The UST has not been brought into compliance or permanently closed as required following the temporary closure period.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state, and this regulatory program is necessary to adequately address this concern. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, corrective action, and reporting and record keeping requirements applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 IAC chapters 135 and 136.
2. Iowa Code section 455B.471(6) defines an "owner" of USTs. Bockoven was an owner of USTs at the above referenced facility and has been at all times relevant to this Order.
3. Iowa Code section 455B.471(5) defines "operator" of USTs as "...a person in control of, or having responsibility for, the daily operation of the underground storage tank." Bockoven was an operator of the above referenced facility at all times relevant to this Order.

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4. 567 IAC 135.4(6), states that “[a]n owner or operator shall designate Class A, Class B, and Class C operators for each underground storage tank system or facility...” and that “[a] facility may not operate after December 31, 2011, unless operators have been designated and trained as required in this rule....”
5. Bockoven failed to designate Class A, B, and C operators for the facility while continuing to operate it in violation of the above rules.
6. 567 IAC 136.4(1) requires an owner to “demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks ....” Department records show that the insurance policy used to demonstrate financial responsibility for the facility has expired, and Bockoven has not responded to a request for proof of a current policy.
7. 567 IAC 136.15(1)“a” requires an owner of a temporarily closed UST to maintain financial responsibility and to continue to operate and maintain corrosion protection. Bockoven has failed to maintain financial responsibility in the form of insurance. Additionally, Bockhoven has stated to the Department that the electricity to the facility has been shut off, and therefore the cathodic protection system that provided corrosion protection for the UST is no longer functioning.
8. 567 IAC 136.15(1)“c” requires an owner of a UST that is temporarily closed for more than twelve months to either demonstrate that the UST meets the performance or upgrade standards of 567 IAC 135.3(1)-(2) or permanently close the UST. Bockoven has not demonstrated compliance nor has he sought an extension of the twelve month temporary closure period. As such, he is required to permanently close the UST.

**V. ORDER**

THEREFORE, the Department hereby orders the following:

1. Bockoven shall pay to the order of the Department an administrative penalty of \$3,000 within 60 days of receipt of this Order.
2. Bockoven shall file a notification of closure with the Department within 30 days of receipt of this Order and permanently close the UST system in compliance with the Department’s closure rules within 90 days of receipt of this Order.

**VI. PENALTY**

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

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2. Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 IAC 10. Pursuant to this rule, 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.

**ECONOMIC BENEFIT:** Bockoven has benefited by not incurring the cost of lost work time and travel expenses required to attend the operator training class. Accordingly, \$200 is assessed for this factor.

**GRAVITY:** The intent of the operator training requirement is to minimize risks to human health and the environment by ensuring that petroleum dispensing facilities are operated by staff that are qualified to monitor the leak detection equipment and trained to effectively respond to spills, overfills, leaks or other emergency situations. Bockoven's UST system is located less than 200 feet from the Des Moines River, so leak and spill protection is particularly critical, and failure to comply with the operator training and emergency preparedness requirements has posed an unnecessary risk to a sensitive ecosystem. Therefore, \$1,000 is assessed for this factor.

**CULPABILITY:** Bockoven has a duty to understand and comply with the regulations governing his business. The Department sent mailings regarding the requirements prior to the effective date of the operator training rules. Department personnel have visited this facility on three separate occasions and specifically discussed these requirements. It is clear that Bockoven is aware of his noncompliance and has taken no steps to comply. As such, \$1,000 is assessed for this factor.

**MITIGATING OR AGGRAVATING FACTORS:** Bockoven has been in violation of the law for an extended period of time, has ignored repeated verbal and written notifications, and has failed to respond to Department communications. A penalty of \$800 is assessed for this factor.

The total penalty calculation comes to \$3,000.00

## VII. WAIVER OF APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476 and 561 IAC 7, as adopted by reference by 567 IAC 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt 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. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 567 IAC 7.

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**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477.

  
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CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 5<sup>th</sup> day of October, 2016