

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Pam Lehman
Decatur County, Iowa**

**ADMINISTRATIVE ORDER
NO. 2010-SW-04**

**TO: Pam Lehman
117732 140th Ave
Grand River, IA 50108**

I. SUMMARY

Pam Lehman is required to do the following: cease the illegal disposal of solid waste; remove all illegally disposed of solid waste and dispose of the waste at a permitted sanitary disposal project, recycling facility or other appropriate facility; submit receipts and other documentation which establish that the waste was disposed of properly to the Department; pay a penalty of \$3,050.00; and \$100.00 in stipulated penalties for each week that the waste is not disposed of past the deadline provided in this order and properly close the well located on her property.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Bill Gross
IDNR Field Office #5
401 SW7th St. Ste I
Des Moines, Iowa 50309
Ph:515/725-0268

Relating to appeal requirements:

Carrie Schoenebaum
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

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 chapter 567—10(455B), Iowa

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Administrative Code (IAC), which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Pam Lehman owns the property locally known as 103 Jefferson, Grand River, Iowa which is located in Section 30, Township 70 N, Range 27 W, in Decatur County, Iowa.
2. On January 9, 2007, the Department received a complaint alleging illegal disposal of solid waste in a well at 103 Jefferson, Grand River, Iowa. On January 11, 2007, Bill Gross, an Environmental Specialist for the Department, investigated the complaint. Once on site he observed a concrete well north of the home filled with household garbage. On January 12, 2007, the Department sent Ms. Lehman a Notice of Violation (NOV) letter, which informed her that it was illegal to dispose of solid waste in such a way. This letter required that the solid waste be removed from the well and properly disposed of by March 1, 2008. The NOV requested that copies of all disposal receipts be submitted to the Department by that date to verify proper disposal.
3. On July 20, 2007, Mr. Gross conducted a follow up investigation which revealed that the well was still filled with household garbage.
4. On July 23, 2007, a second NOV was sent to Ms. Lehman. This NOV reiterated the points of the first, and requested that disposal receipts indicating proper disposal of the solid waste be submitted to the Department by September 1, 2007.
5. On August 10, 2007, Ms. Lehman called Mr. Gross and said that she did not receive the first letter and is currently looking for a contractor to properly dispose of the solid waste. She also stated that she will keep the landfill receipts and call when removal is completed.
6. On October 29, 2007, April 28, 2008, and January 5, 2009, Mr. Gross conducted follow up investigations and found that the solid waste remained in the well.
7. On January 13, 2009, Mr. Gross sent Ms. Lehman a NOV for improper disposal of solid waste. This letter informed Ms. Lehman that the matter was being referred to the Department's Legal Services Bureau for enforcement.
8. On September 24, 2009, Mr. Gross conducted a follow up investigation and found that the solid waste remained in the well.

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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 100-123.
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.
3. Iowa Code section 455B.171(1) defines an "[a]bandoned well [as] a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impractical." Once a well has been abandoned it must be closed pursuant to Iowa Code section 455B.190 and 567 IAC chapter 39. Specifically 567 IAC 39.5(4) requires that "[a]ll classes of wells which are abandoned on or after April 25, 1990, must be properly plugged within 90 days of the date of abandonment." The above stated facts disclose a violation of this provision.

V. ORDER

Therefore, the Department orders Pam Lehman to do the following:

1. Within 30 days of the date the Director signs this order remove all illegally disposed of solid waste at the site mentioned in this order and dispose of the waste at a permitted sanitary disposal project, recycling facility, or other appropriate facility;
2. Cease the illegal disposal of solid waste in the future;
3. Within 45 days of the date the Director signs this order submit receipts and other documentation of proper disposal;
4. By March 1, 2010, plug the well located at the site mentioned in this order in accordance with 567 IAC chapter 39 and provide written proof of such plugging in accordance with 567 IAC 39.6(2);
5. Within 45 days of the date the Director signs this order pay a penalty of \$3,050.00 to the Department; and
6. Pay stipulated penalties in the amount of \$100.00 each week for violations of the deadline contained in V.1 above.

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VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director, at the address provided above, within 30 days of your receipt of this order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Carrie Schoenebaum, attorney for the Department, at (515) 281-0824 for more information regarding appeal procedures and resolution of this order.

VIII. NONCOMPLIANCE

Failure to comply with this order 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 section 455B.307. Compliance with provision "V1-V5 Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. The Department reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this order.


Richard A. Leopold, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 25 day of
Jan., 2010.

Pam Lehman- Field Office 5, Carrie Schoenebaum; Bill Gross, IV.C.