

IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

IN RE:

Fostoria Mart
12 Hwy 71 Ave. NW
Fostoria, IA 51340

ORDER NO. 26-493

**ADMINISTRATIVE ORDER TO
TEMPORARILY WAIVE E-15 ACCESS
STANDARDS**

TO: Fostoria Mart hereinafter “Retail Dealer”.

I. SUMMARY

Retail Dealer has made an application to the Iowa Department of Agriculture and Land Stewardship (Department) under Iowa Code section 214A.35 for waiver of the requirement of Iowa Code section 214A.32 at 12 Hwy 71 Ave. NW, Fostoria, IA, hereinafter “Site”. Retail Dealer’s application for waiver of the requirement of Iowa Code section 214A.32 for the Site, is hereby granted.

This Order temporarily waives the requirements of Iowa Code section 214A.32 for Retail Dealer at Site. The waiver shall be in effect from the date of publication on the Department’s website through and until a terminable event has occurred as defined in this Order.

Questions regarding this Order should be directed to:

Relating to Technical Requirements:

Mike Harrington

Bureau Chief, Weights and Measures Bureau

Appeal, if any, to:

Secretary,

Iowa Dept. of Agriculture and Land Stewardship

Relating to Appeal Rights:

Jacob Larson

Attorney for Iowa Dept. of Agriculture and Land Stewardship,

Iowa Laboratory Facility	Henry A. Wallace Building	Assistant Attorney General
2230 South Ankeny Blvd.	502 E. 9 th Street	Hoover State Office Building
Ankeny, IA 50023	Des Moines, Iowa 50319	1305 E. Walnut Street
Phone: (515) 321-0031		Des Moines, Iowa 50319 Phone: (515) 281-5341

II. JURISDICTION

1. The Department has jurisdiction of this matter pursuant to Iowa Code chapter 214A and 21 Iowa Administrative Code (IAC) chapter 86.
2. All terms not defined within the Order shall have the meaning affixed to them in Iowa Code chapter 214A and 21 IAC chapter 86.
3. Retail Dealer is a retail dealer as defined under Iowa Code section 214A.1.

E-15 ACCESS STANDARD

4. Iowa Code section 214A.32 requires that a retail dealer owning or operating a retail motor fuel site shall comply with the E-15 access standard as provided in this section unless the standard is suspended, waived or exempted as provided in sections 214A.33 through 214A.36.
5. IAC section 21-86.2 further provides that a retail dealer shall advertise for sale and sell E-15 gasoline pursuant to Iowa Code section 214A.32 unless any of the following apply:
 - (a) The retail dealer has been granted an incompatible infrastructure class 1

waiver order;

- (b) The retail dealer has been granted an incompatible infrastructure class 2 waiver order;
- (c) The retail dealer has been granted a small retail motor fuel site exemption.

WAIVER OF E-15 ACCESS STANDARD REQUIREMENTS

6. Under Iowa Code section 214A.35, a retail dealer may apply for an E-15 incompatible infrastructure waiver order by submitting an application to the Department in a manner and according to procedures required by the Department.

- (a) The application must be supported by credible evidence that the retail dealer is unable to comply with the alternative E-15 access standard because the gasoline storage and dispensing infrastructure located at the retail motor fuel site is not compatible with the use of E-15 gasoline and that the retail dealer is eligible for a class 1 or class 2 waiver.

§214A.35(2)(a).

- (b) The application must provide information required to be completed by the retail dealer, which must include an inventory and description of gasoline storage and dispensing infrastructure located at the retail motor fuel site.

§214A.35(2)(b).

- (c) Additionally, the retail dealer shall include supporting documentation with the application regarding the retail motor fuel site's gasoline storage tanks including the date of installation and the material that the tank is constructed from. 21 IAC §86.3(1). Credible evidence must include that all gasoline storage tanks that are located at the retail motor fuel site fall

within any number of the following categories:

- i. Each gasoline storage tank not constructed of fiberglass was installed during or prior to 1985.
- ii. Each gasoline storage tank constructed of fiberglass was installed during or prior to the following years: (a) For a double-wall fiberglass underground gasoline storage tank, 1991. (b) For a single-wall fiberglass underground gasoline storage tank, 1996.

(d) The department may require a retail dealer to attach any supporting documentation to the application, which may include an inspection report completed by a person certified by the department as a professional retail motor fuel site installer. The certified professional retail motor fuel site installer may be a licensed engineer or other person who the department determines is qualified by education, testing, or experience to oversee a project involving the installation, replacement, or conversion of gasoline storage and dispensing infrastructure, and who is able to provide a reliable estimate of the project's costs. §214A.35(2)(c).

(e) The retail dealer must sign the application which shall include a statement that the retail dealer swears and affirms that all information in the application completed by the retail dealer is true and correct. If a certified professional retail motor fuel site installer completes an inspection report to support an application, the installer shall sign a statement that the installer swears and affirms that all information in the inspection report

completed by the installer is true and correct. §214A.35(2)(e).

IDALS ANALYSIS

7. Iowa Code section 214A.35(2)(d) states that the Department shall review and evaluate an application to determine whether it is supported by credible evidence sufficient for the Secretary to issue an order granting a waiver. The Department shall approve or disapprove a completed application within one hundred twenty days following the date that the application was delivered to the Department for filing.
8. Iowa Code subsection 214A.35(1) provides that the Secretary of Agriculture shall issue an administrative order that temporarily waives the requirement in section 214A.32, if the retail motor fuel site qualifies based on the incompatibility of the motor fuel storage and dispensing infrastructure to store and dispense E-15 gasoline.
9. The Department may inspect the premises of a retail motor fuel site during normal business hours to administer and enforce the provisions of section 214A.35. *See Iowa Code §§214A.35(2)(f).*
10. If the Department determines an inspection of the retail motor fuel site is necessary, it may either conduct the inspection or accept an inspection report completed by a certified professional retail motor fuel site installer. Iowa Code §§214A.35(5)(a).
11. Additionally, the Department may cooperate with the Department of Natural Resources and the State Fire Marshal in administering and enforcing the provisions section 214A.35, including consulting with the Department of Natural

Resources to confirm documentation submitted by the retail dealer. *See Iowa Code §§214A.35(2)(g).*

12. The department shall publish a copy of the E-15 incompatible infrastructure waiver order on the department's internet site within ten days after the order's issuance. The order shall take effect on its date of publication, unless the order specifies a later date. Iowa Code §§214A.35(3).

TERMINATION OF WAIVER

13. Waivers submitted under Iowa Code section 214A.35 shall be terminated if a terminable event has occurred. A terminable event occurs on the date that any of the following apply:
 - (a) The failure of a retail dealer to be licensed as required under section 214.2 to use a commercial weighing and measuring device when dispensing gasoline.
 - (b) The cessation of the retail dealer's business of advertising for sale or selling gasoline at the retail motor fuel site.
 - (c) The installation, replacement, or conversion of a motor fuel or gasoline storage tank located at the retail motor fuel site. *See Iowa Code §§ 214A.35(4) and 21 IAC §§86.5(2).*
14. A retail dealer shall notify the department when a terminable event is planned to occur, is occurring, or has occurred. 21 IAC §§86.5(1).
 - (a) Failure to notify the department may result in the termination of a class 1 waiver, class 2 waiver, or small retail motor fuel site exemption. 21 IAC §§86.5(1).

(b) The department may also suspend or revoke the retail dealer's license. 21
IAC §§86.5(1).

III. STATEMENT OF FACTS

15. On 2/3/26, the Department received a waiver application from the Retail Dealer for the Site.
16. An inspection of the Site was conducted by Iowa DNR, a certified or registered Iowa motor fuel site installation professional, on 6/1/95.
17. The Retailer has submitted the following complete and accurate fuel storage tank inventory at the Site which is confirmed by the Inspector's report as submitted with Retail Dealer's Class 1 waiver application:

Tank number	Tank Construction Material	Date of Installation
4 – 6,000 gal tanks	FRP	6/1/1995

IV. CONCLUSIONS OF LAW

18. The Department has determined that the application received by the Retail Dealer meets the requirements of Iowa Code section 214A.35 and 21 IAC chapter 86.
19. The Department has determined that the Retail Dealer is entitled under Iowa Code section 214A.35 to waiver of Iowa Code section 214A.32 requirements as all gasoline storage tanks that are located at the Site fall within any number of the following categories:
 - (a) Each gasoline storage tank not constructed of fiberglass was installed during or prior to 1985.
 - (b) Each gasoline storage tank constructed of fiberglass was installed during or prior to the following years:
 - i. For a double-wall fiberglass underground gasoline storage tank, 1991.
 - ii. For a single-wall fiberglass underground gasoline storage tank, 1996.

V. ORDER

THEREFORE, IDALS orders the following:

20. Retail Dealer's 2/3/26 application for waiver of the requirement of Iowa Code section 214A.32 for the Site, is hereby granted.
21. The requirements of Iowa Code section 214A.32 are temporarily waived for Retail Dealer at Site. The waiver shall be in effect from the date of publication on the Department's website through and until a terminable event has occurred as defined in this Order.

22. All other requirements for a retail dealer or retail motor fuel site shall remain in effect.

TERMINATION EVENTS

23. This Order shall terminate upon the date of any of the following occurrences:

- (a) The failure of a retail dealer to be licensed as required under section 214.2 to use a commercial weighing and measuring device when dispensing gasoline.
- (b) The cessation of the retail dealer's business of advertising for sale or selling gasoline at the site.
- (c) The installation, replacement, or conversion of a motor fuel or gasoline storage tank located at the site. *See Iowa Code section 214A.35(4) and 21 IAC 86.5(2).*

24. The retail dealer must notify the Department if any of the above terminable events is planned to occur, is occurring, or has occurred. *See Iowa Code section 214A.35(4)(b) and 21 IAC 86.5.*

VI. APPEAL RIGHTS

25. Pursuant to Iowa Code section 17A.12 and 21 Iowa Administrative Code section 2.4, a written Notice of Appeal may be filed with the Secretary within 30 days of the date of publication of this Order on the Department's website. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 21 Iowa Administrative Code chapter 2.

VI. SETTLEMENT

26. This matter may be resolved by settlement agreement. The settlement process is governed by Iowa Code section 17A.10. If you are interested in pursuing settlement of this matter, please contact the attorney for IDALS, Jacob Larson, Assistant Attorney General, at 515-281-5341.

Date: _____

Travis Knight
Regulatory Division Director
Iowa Department of Agriculture and
Land Stewardship