

IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

IN RE:

Hy-Vee Fast & Fresh
2400 2nd Ave.
Muscatine, IA 52761

ORDER NO. 25-9456

**ADMINISTRATIVE ORDER TO
TEMPORARILY WAIVE E-15 ACCESS
STANDARDS (Class 2 Waiver)**

TO: Hy-Vee Fast & Fresh, hereinafter “Retail Dealer”.

I. SUMMARY

Retail Dealer has made application to the Iowa Department of Agriculture and Land Stewardship (Department) for an E-15 incompatible infrastructure Class 2 waiver under Iowa Code section 214A.35 for temporary waiver of the requirement of Iowa Code section 214A.32 at 2400 2nd Ave., Muscatine, IA, hereinafter “Site”. Retail Dealer’s application for E-15 incompatible infrastructure Class 2 waiver of the requirements 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 based upon the incompatibility of the Site’s infrastructure. The temporary waiver shall be in effect from the date of publication on the Iowa Department of Agriculture and Land Stewardship’s (Department) website through and until a terminable event has occurred as defined in this Order.

Questions regarding this Order should be directed to:

<u>Relating to Technical Requirements:</u>	<u>Appeal, if any, to:</u>	<u>Relating to Appeal Rights:</u>
Mike Harrington	Secretary,	Jacob Larson
Bureau Chief, Weights and Measures Bureau	Iowa Dept. of Agriculture and Land Stewardship	Attorney for Iowa Dept. of Agriculture and Land Stewardship, Assistant Attorney General
	Hoover State Office Building	Hoover State Office Building
2230 South Ankney Blvd.	1305 E. Walnut Street	1305 E. Walnut Street
Ankeny, IA 50023	Des Moines, Iowa 50319	Des Moines, Iowa 50319
Phone: (515) 321-0031		Phone: (515) 281-5341

II. JURISDICTION

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

E-15 ACCESS STANDARD

4. The E-15 access standard is established through Iowa Code section 214A.31 which requires that consumers have access to gasoline containing 15 percent

ethanol by volume.

5. Pursuant to Iowa Code section 214A.32, a retail dealer owning or operating a retail motor fuel site must comply with the E-15 access standard unless the standard is suspended, waived or exempted as provided in sections 214A.33 through 214A.36. *See Iowa Code section 214A.32.*
6. 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.
7. To comply with the E-15 access standard, a retail dealer must advertise for sale and sell E-15 gasoline from a minimum number of qualifying gasoline dispensers located at the retail dealer's retail motor fuel site. *See Iowa Code section 214A.32(2).*
8. A retail dealer is required to dispense E-15 gasoline from, at minimum, one qualified gasoline dispenser through either the general or alternative access standard. *See Iowa Code sections 214A.32(2)(a)-(b).*

WAIVER OF E-15 ACCESS STANDARD REQUIREMENTS

9. 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.

10. 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 2 waiver. Iowa Code section 214A.35(2)(a).
11. Along with the application, the retail dealer must submit an inspection report completed by a certified professional retailer motor fuel site installer to the Department. *See Iowa Code sections 214A.35(6) and 214A.35(2)(b).*
 - (a) The inspection report must include:
 - i. A completed checklist of items adopted as part of a form used by the Department to confirm that the gasoline storage and dispensing infrastructure located at the retail motor fuel site is not compatible with E-15 gasoline. Iowa Code section 214A.35(6)(a)(1).
 - ii. An inventory of all motor fuel storage and dispensing infrastructure at the retail motor fuel site. Iowa Code section 214A.35(2)(b) and 21 IAC subsection 86.3(2).
 - iii. The total estimated cost of improving the retail motor fuel site to comply with the alternative E-15 access standard by installing, replacing, or converting the gasoline storage and dispensing infrastructure located at the retail motor fuel site. Iowa Code section 214A.35(6)(a)(2) and 21 IAC subsection 86.3(2).

12. The application must be complete and be signed by the retail dealer. The application 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. *See Iowa Code section 214A.35(2)(e) and 21 IAC subsection 86.3(2).*
13. The inspection report must be signed by the certified professional retail motor fuel site installer. 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. *See Iowa Code section 214A.35(2)(e).*
14. The Department is authorized to cooperate with the Department of Natural Resources (DNR) and the Department of Inspections, Appeals, and Licensing (DIAL) in the administration and the enforcement of Class 2 waivers. *See Iowa Code 214A.35(2)(g).*
15. Pursuant to Iowa Code chapter 455B and 455G, DNR generally oversees underground storage tanks, fuel storage tanks and dispensing infrastructure, including determining the compatibility for ethanol blended fuel.
16. Pursuant to Iowa Code chapter 101, DIAL generally oversees aboveground fuel storage tanks and above ground infrastructure, including determining the compatibility for ethanol blended fuel .
17. Through Iowa Code section 455G.31, DIAL is permitted to determine the ethanol blended compatibility of aboveground gasoline infrastructure pursuant to its authority under Iowa Code chapter 101.

IDALS ANALYSIS

18. 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. Iowa Code section 214A.35(2)(d).
19. Iowa Code subsection 214A.35(1) provides that the Secretary of Agriculture shall issue an administrative order that temporarily waives the requirements 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.
20. Additionally, the Department may cooperate with DNR and DIAL in reviewing and administering Class 2 waivers, including consulting to confirm E-15 incompatibility and documentation submitted by the retail dealer. *See Iowa Code §§214A.35(2)(g).*
 - (a) Underground fuel storage tank E-15 incompatibility is confirmed through the DNR tank registration.
 - (b) Underground fuel infrastructure E-15 incompatibility is confirmed in consultation with DNR.
 - (c) Aboveground fuel tank E-15 incompatibility is confirmed through the DIAL tank registration.
 - (d) Aboveground fuel infrastructure and dispenser E-15 incompatibility is confirmed in consultation with DIAL.

21. The Department shall determine whether to issue an E-15 incompatible infrastructure Class 2 waiver based on an eligibility assessment which shall calculate all of the following:
- (a) The total estimated cost of improvement which equals the sum of all of the following:
 - i. The reasonable cost of assessing the retail motor fuel site to determine the estimated cost of improving the retail motor fuel site as described in subparagraph subdivision (ii).
 - ii. The estimated cost of improving the retail motor fuel site to comply with the alternative E-15 access standard based on the Department's analysis of the inspection report described in Iowa Code section 214A.35(6)(a). The estimated cost of improving the retail motor fuel site shall only include costs used to calculate the amount of standard financial incentives that could be awarded by the renewable fuel infrastructure board to a retail dealer participating in the renewable fuel infrastructure program for retail motor fuel sites as provided in section 159A.14. *See Iowa Code section 214A.35(6)(b).*
 - (b) The E-15 infrastructure base amount which equals the maximum cost necessary to be incurred by the retail dealer in order to receive the total amount of standard financial incentives that could be awarded to the retail dealer under tier III of the renewable fuel infrastructure program for retail

motor fuel sites as provided in section 159A.14 in order to comply with the alternative E-15 access standard. Iowa Code section 214A.35(6)(b).

- i. The amount of standard financial incentives awarded to improve the tier III site is 70 percent of the actual cost of making the improvement or \$75,000, whichever is less. Iowa Code section 159A.14(6)(d)((2).
- ii. Therefore, to receive the maximum tier III award of \$75,000 on the 70 percent cost share basis, the actual cost of the improvement incurred by the retail dealer must equal at least \$107,142 (\$75,000 divided by 70 percent).

(c) The Department's cost calculation shall not include any of the following:

- i. The amount of any prior financial incentives awarded to the retail dealer under the renewable fuel infrastructure program for retail motor fuel sites.
- ii. Whether the retail dealer may apply for, is applying for, or may be awarded any future financial incentives under the renewable fuel infrastructure program for retail motor fuel sites. Iowa Code section 214A.35(6)(b)(1)(b).

22. A retail dealer is only eligible to be issued a Class 2 waiver if the Department determines that the total estimated cost of improvement exceeds the E-15 infrastructure base amount (\$107,142). *See Iowa Code section 214A.35(6)(b)(2) and Order subparagraph 16(b) above.*
23. The Department shall publish a copy of the E-15 incompatible infrastructure

waiver orders 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.

TERMINATION OF WAIVER

24. 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 subsection 214A.35(4) and 21 IAC subsection 86.5(2).*
25. A retail dealer shall notify the Department when a terminable event is planned to occur, is occurring, or has occurred. 21 IAC subsection 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 subsection 86.5(1).
 - (b) The Department may also suspend or revoke the retail dealer's license. 21 IAC subsection 86.5(1).

III. STATEMENT OF FACTS

26. On 9/2/25 , the Department received an E-15 incompatible infrastructure Class 2 waiver application from Retail Dealer for the Site.
27. Retail Dealer has submitted an inspection report completed by a certified professional retail motor fuel site installer which includes one or more storage or dispensing infrastructure components located at the Site is incompatible to store and dispense E-15 gasoline.
28. Additionally, the Retail Dealer inspection report submitted by the Retail Dealer provides the total estimated cost of improvement of the retail motor fuel site to comply with the alternative E-15 access standard by installing, replacing, or converting the incompatible gasoline storage and dispensing infrastructure located at Site is \$113,790.60. .

IV. CONCLUSIONS OF LAW

29. The Department has determined that the application received from the Retail Dealer meets the requirements of Iowa Code section 214A.35 and IAC chapter 21-86.
30. The Department has determined, based upon the analysis of the inspection report submitted by the Retail Dealer and consultation with DNR and DIAL where necessary, that the Retail Dealer's total estimated cost of the improvement of the Site to comply with the alternative E-15 access standard is reasonable, and includes only incompatible and eligible costs.
31. The Department has determined that the total estimated cost of improvement at

the Site exceeds the E-15 infrastructure base amount of \$107,142.

32. The Department has determined that the Retail Dealer is entitled under Iowa Code section 214A.35 to an E-15 incompatible infrastructure Class 2 temporary waiver of Iowa Code section 214A.32 requirements.

V. ORDER

THEREFORE, IDALS orders the following:

33. Retail Dealer's 9/2/25 application for temporary waiver of the requirement of Iowa Code section 214A.32 for the Site, is hereby granted.
34. 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.
35. All other requirements for a retail dealer or retail motor fuel site shall remain in effect.

TERMINATION EVENTS

36. This Order shall terminate upon the date of any of the following occurrences:
 - (a) The failure of the 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).*

37. 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

38. Pursuant to Iowa Code section 17A.12 and Iowa Administrative Code chapter 21-2, 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 Iowa Administrative Code chapter 21-2.

VI. SETTLEMENT

39. 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.

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

Date: _____