

HAND DELIVERY



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

STATE OF INDIANA) SS: BEFORE THE INDIANA DEPARTMENT OF
)
 COUNTY OF MARION) ENVIRONMENTAL MANAGEMENT

COMMISSIONER OF THE DEPARTMENT)
 OF ENVIRONMENTAL MANAGEMENT,)
)
 Complainant,)
)
 v.) Red Tag Serial # **0001387**,
) **0001388**, **0001389**, and **0001390**

ERIC and ERROL TONEY,)
)
 Respondents.)

TEMPORARY ORDER TO PROHIBIT DELIVERY TO UNDERGROUND STORAGE TANK

VIA CERTIFIED MAIL #: 7007 1490 0000 0839 2938

Eric and Errol Toney
2866 S IN 66
Marengo, IN 47140

This Temporary Emergency Order (“Order” or “TEO”) is issued pursuant to Indiana Code (“IC”) 13-23-1-4 and enforced under IC 4-21.5-4. This Order takes effect immediately according to IC 13-23-1-4(b)(2) and IC 4-21.5-4-3. This Order prohibits any delivery of petroleum or any other regulated substances into Tanks #1, #2, #3 and #4, of undetermined volume, located at Facility ID #50117, parcel number 13-07-13-127-001.000-006, East Goodman Ridge Road, Marengo, Crawford County, Indiana (“Site”).

Respondents are Eric and Errol Toney (“Respondents”), who own/operate Underground Storage Tank (“UST”) systems located at the Site.

On March 20, 2024, the Indiana Department of Environmental Management (“IDEM”) conducted an inspection at the Site. Following the inspection, it was determined that Tanks #1, #2, #3 and #4, containing motor fuel, are ineligible for delivery, deposit, or acceptance of petroleum or any other regulated substance.

The determination of ineligibility is based upon inspections and review of applicable records conducted by IDEM's Office of Land Quality. During the March 20, 2024 inspection, it was determined that the Respondents were in violation of applicable rules and statutes. Red Tag Serial Nos. 0001387, 0001388, 0001389, and 0001390 will be placed on the UST systems and will remain affixed to prohibit delivery of petroleum and other regulated substances to the non-compliant USTs until the violations have been adequately addressed. The UST systems are ineligible for delivery because Respondents are in violation of the regulations enumerated in the Violations section below. The Order is based on the following facts and law:

VIOLATIONS

1. Pursuant to IC 13-23-1-4(b)(1), the commissioner may determine whether a UST is eligible for delivery, deposit, or acceptance of a regulated substance.

Pursuant to IC 13-23-1-4(b)(2)(A), the commissioner may issue a temporary order to prohibit the use of a UST that has been determined to be ineligible under subdivision (1), and demand compliance with the rules adopted under this chapter as follows:

- (A) If an underground storage tank inspection shows failure to install equipment for:
 - i. Corrosion protection;
 - ii. Leak detection;
 - iii. Overfill protection; or
 - iv. Spill prevention.

The commissioner must give the owner or operator written notice before implementing a temporary order under this clause.

Pursuant to 329 Indiana Administrative Code ("IAC") 9-4.5-6(c), if a UST is determined to be ineligible for failure to install corrosion protection, leak detection, overfill protection, or spill prevention, the commissioner may determine an immediate order of delivery prohibition be issued and a red tag attached to the UST. The delivery prohibition order may serve as notification of ineligibility.

All four (4) UST systems at this site are ineligible for delivery because they have no form of corrosion protection, no form of leak detection, no form of overfill protection, no form of spill prevention equipment, and contained product when inspected.

2. Pursuant to 40 Code Fed. Reg § 280.21, as incorporated by 329 IAC 9-1-1(c), owners and operators must permanently close (in accordance with 329 IAC 9-6), any UST system that does not meet the new UST system performance standards in § 280.20 or has not been upgraded in accordance with paragraphs (b) through (d) of this section.

All four (4) UST systems at this site are subject to closure for failure to comply with performance standards related to corrosion protection, leak detection, overflow protection and spill prevention as required for new or upgraded UST systems.

ORDER

This Order is effective immediately. Respondents must comply with the following requirements:

1. Respondents shall not deposit or allow the deposit of a regulated substance into any UST system(s) at the Site, in accordance with IC 13-23-1-4 and 329 IAC 9-4.5-8.
2. Respondents shall immediately notify the fuel delivery transporter(s) of the delivery prohibition status of the UST systems and inform the transporter(s) that they may not deposit a regulated substance into the UST systems, as required by 329 IAC 9-4.5-8(b).
3. No person may remove, deface, alter, or otherwise tamper with a red tag, in accordance with 329 IAC 9-4.5-8(d).
4. Respondents shall submit a Thirty (30) Day Notification of Intent to Close (State Form 56553 (R5 / 5-23)) within thirty (30) days of receipt of this Order.
5. Respondents shall have a properly certified contractor permanently close all UST systems at the Site within sixty (60) days of receipt of this Order.
6. Respondents shall submit the closure site assessment required by 329 IAC 9-6 within thirty (30) days of completion of the UST systems removal.
7. If Respondents desire to meet with IDEM for clarification regarding compliance requirements or for any other reason, a call requesting such may be made to the compliance manager below. A meeting will be held within ten (10) days after a request.
8. A person who fails to comply with this Order is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance according to IC 13-23-14-4.
9. Respondents shall provide notice to IDEM seven (7) days prior to any scheduled testing so that an IDEM representative can remove the red tag to allow for the testing.
10. All submittals required by this Order, unless notified otherwise in writing, shall be sent to:

Thomas F. Newcomb, Chief

Office of Land Quality – Mail Code 67-01
Indiana Department of Environmental
Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

11. Upon notification and submission to IDEM of documents that demonstrate the violations have been corrected in the manner set out above, or otherwise corrected as agreed upon by both Respondents and IDEM, the agency shall:
 - a. Inspect the underground storage tank system site within five (5) business days after the notification to validate the documentation submitted by Respondents.
 - b. Upon validation of the submitted documentation, immediately remove the red tag order and provide written confirmation to Respondents that the violations have been corrected.

12. This Order applies to and is binding upon Respondents and their successors and assigns. No change in ownership, corporate, or partnership status of Respondents shall in any way alter their status or responsibilities under this Order. If a Respondent transfers ownership of Tank #1 through Tank #4 to a new owner, the transferring Respondent shall provide notification as required by 329 IAC 9-4.5-11 and the new owner must complete the corrective actions required to comply with this order.

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

If you wish to challenge this action, you must file a Petition for Administrative Review with the Office of Environmental Adjudication ("OEA"), and serve a copy of the petition upon IDEM. The requirements for filing a Petition for Administrative Review are found in IC 4-21.5-3-7 and 315 IAC 1-3-2. A summary of the requirements of these laws is provided below.

A Petition for Administrative Review must be filed with the OEA within fifteen (15) days of the issuance of this notice, or eighteen (18) days if you received this notice by U.S. Mail, and a copy must be served upon IDEM. Addresses are:

Director
Office of Environmental Adjudication
Indiana Government Center North
Room N-103
100 North Senate Avenue
Indianapolis, Indiana 46204

Commissioner
Indiana Department of Environmental Management
Indiana Government Center North
Room 1301
100 North Senate Avenue
Indianapolis, Indiana 46204

The petition must contain the following information:

1. The name, address and telephone number of each petitioner.
2. An identification of each petitioner's interest in the subject of the petition.
3. A statement of facts demonstrating that each petitioner is:
 - a. a person to whom the order is directed;
 - b. aggrieved or adversely affected by the determination; or
 - c. entitled to administrative review under any law.

4. The reasons for the request for administrative review.
5. The particular legal issues proposed for review.
6. The facts, terms or conditions of the action for which the petitioner requests review.
7. The identity of any persons represented by the petitioner.
8. The identity of the person against whom administrative review is sought.
9. A copy of the action that is the basis of the petition.
10. A statement identifying petitioner's attorney or other representative, if any.

Failure to meet the requirements of the law with respect to a Petition for Administrative Review may result in a waiver of your right to seek administrative review. Examples are:

1. Failure to file a Petition by the applicable deadline;
2. Failure to serve a copy of the Petition upon IDEM when it is filed; or
3. Failure to include the information required by law.

If you seek to have an action stayed during the administrative review, you may need to file a Petition for a Stay of Effectiveness. The specific requirements for such a Petition can be found in 315 IAC 1-3-2 and 315 IAC 1-3-2.1.

Pursuant to IC 4-21.5-3-17, OEA will provide all parties with notice of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action. If you are entitled to notice under IC 4-21.5-3-5(b) and would like to obtain notices of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action without intervening in the proceeding you must submit a written request to OEA at the address above.

If you have procedural or scheduling questions regarding your Petition for Administrative Review you may contact the Office of Environmental Adjudication at (317) 232-0850 or see OEA's website at <http://www.in.gov/oea>.

Dated at Indianapolis, Indiana, this 11 day of June, 2024.



Brian C. Rockensuess
Commissioner

cc: Crawford County Health Department
Tom Newcomb, UST Compliance Section Chief
Julie Lang, Attorney, Office of Legal Counsel
Jennifer Reno, Land Enforcement Section Chief
Online Delivery Prohibition List
UST Public File # 50117

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
SS: ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)
)
COMMISSIONER, INDIANA DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT,)
)
Complainant,)
)
vs.)
ERIC AND ERROL TONEY,)
)
Respondents.)

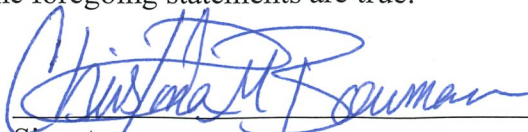
DELIVERY PROHIBITION
TEMPORARY EMERGENCY ORDER
FOR UST FACILITY ID 50117

AFFIDAVIT OF CHRISTINA BOWMAN

After having first been duly sworn, Christina Bowman states as follows:

1. I am over the age of 18.
2. I am employed by the Indiana Department of Environmental Management (IDEM), Office of Land Quality, Petroleum Branch.
3. On June 13, 2024, at 1:14 a.m./p.m. at 396 South Main Street, in Marengo, Indiana, I served the Delivery Prohibition Temporary Emergency Order, pursuant to IC 13-23-1-4 regarding the Indiana Department of Environmental Management v. Eric and Errol Toney, on Toney Bulk Plant, a Respondent in this matter.
4. I knew the person served to be Errol Toney.
5. My knowledge of the respondent is based on introduction by consultant.
6. A true and accurate copy of the Temporary Emergency Order v. Eric and Errol Toney, served on Respondent is attached.

I affirm under the penalties of perjury that the foregoing statements are true.



Signature

06/20/2024

Date

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

SUBSCRIBED AND SWORN to before me, a Notary Public in and for said County and State, this 20th day of Jun, 2024.



Notary Public Signature

Janet Therese Smith
Printed Name

My Commission Expires: 3/20/2026
County of Residence: Johnson



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> <i>Eric Toney</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>Eric Toney</i>	C. Date of Delivery
1. Article Addressed to: <div style="border: 1px solid black; padding: 5px; text-align: center;"> Eric and Errol Toney 2866 S. State Road Marengo, IN 47140 </div>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number <small>(Transfer from ser)</small>	7007 1490 0000 0839 2938	
	3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

Tracking Number:

7007149000008392938

Copy Add to Informed Delivery

Latest Update

Your item was picked up at the post office at 10:40 am on June 26, 2024 in MARENGO, IN 47140.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Individual Picked Up at Post Office

MARENGO, IN 47140
 June 26, 2024, 10:40 am

[See All Tracking History](#)

[What Do USPS Tracking Statuses Mean?](#)