

STATE OF INDIANA

BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)	
THE PERMIT OF)	
EXPRESS GAS 1@FOOD MART LLC)	#TC15103001
400 N APPERSON WAY)	EX-21-011590
KOKOMO, INDIANA 46901)	EX-22-010519

PERMITTEE

ORDER ON RULE TO SHOW CAUSE

Comes now the Hearing Judge for the Indiana Alcohol and Tobacco Commission (ATC) and for the Order on Rule to Show Cause states as follows:

1. Andrew Wignall appears as prosecutor.
2. No appearance was filed and no one appeared for the Show Cause hearing on June 8, 2023 at 11 am.
3. The Permittee had previously failed to appear after appropriate notice was given pursuant to 905 IAC 1-27-9, for a Notice of Violation and Settlement Offer on November 19, 2021 and October 20, 2022, for hearings respectively on January 10, 2022 and December 12, 2022.
4. Evidence was submitted that the Permittee had received an Order to Show Cause Notice sent by certified mail, with a return notice indicating delivery occurring on May 27, 2023, and was available for pickup.
5. That the Order to Show Cause Notice indicated that the nature of the hearing on June 8, 2023, would be to determine if the Permittee's certificate or permit should be fined, suspended or revoked.
6. That the Notice also indicated that if the Permittee failed to appear on June 8, 2023, that a default judgment shall be issued against the permit and a sanction imposed which could include suspension or revocation of the permit.
7. Evidence was presented by a preponderance of evidence through exhibits 1 and 2, which were offered and admitted into evidence.
8. Exhibit #1 revealed that on October 5, 2021, the Indiana State Excise officer entered the permit premises and observed what they believed was marijuana but was actually a leaf plant material identified as Khat, which is a plant that contains cathine and cathinone,

both of which are controlled substances and the clerk advised is a plant material found in Yemen, resulting in a violation for controlled substance and for public nuisance.

9. Exhibit #2 revealed on September 17, 2022, the Indiana State Excise officer entered the premises and witnessed a young male, later determined to be 18, purchase an Elf Bar (a vape device) without being asked for identification and leave the premises where his age of 18 was verified.
10. Further, Exhibit #2 revealed another incident where the officer stopped an underage female who had just left the Permittee's premises and learned that she had also purchased a vape device at the Permittee's premises and that she also was under 21.
11. Since no one on behalf of or from the Permittee has appeared for either the Settlement Offer Hearing or this Order to Show Cause Hearing, the Hearing Judge finds that the violations filed in these matters warrant the revocation of the permit.
12. Pursuant to IC 7.1-3-23-5, the Commission shall revoke a permit of any type on account of the violations of or refusal to comply with a provision of IC Title 7.1, or a rule or regulation of the Commission, which must be found by a preponderance of the evidence.
13. Pursuant to IC 7.1-3-23-6, the Commission shall give at least a 10 days' notice to the holder of the permit proposed to be revoked, which notice was given by the letter sent on May 17, 2023, which notice informed the Permittee of the time and place of the hearing to be held regarding the proposed revocation.
14. The hearing on June 8, 2023, was held in the manner prescribed under IC 7.1-3-23-6.
15. Based upon the information and evidence presented at the hearing on June 8, 2023, the permit issued to Express Gas 1@Food Mart LLC, by the Commission is hereby revoked.
16. This revocation order will be scheduled for a final hearing before the Commission in the upcoming month.
17. It is further found that because of the circumstances in these matters, neither the owner nor Express Gas 1@Food Mart LLC shall be issued a tobacco permit for a period of one year from the final order of these matters by the full Commission.

IT IS THEREFORE ORDERED that the permit of Express Gas 1@Food Mart LLC issued by the ATC under TC15103001 is hereby revoked, subject to a hearing before the ATC and, Express Gas 1@Food Mart LLC and its owner are prohibited from applying for or receiving a permit to sell tobacco in the State of Indiana for one year from the date of the final order of the ATC.


All of which is ordered this 8th day of June 2023.


James W. Payne, Hearing Judge

CC: Andrew Wignall, Prosecutor

Express Gas 1@Food Mart LLC, permittee

Approved this 18th day of July, 2023.



JESSICA ALLEN, CHAIR



JAMES PAYNE, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER