Environmental Considerations

Environmental Issues

Environmental Considerations for Owners/Operators of Retail Dispensaries

In general, the major area where environmental issues come into play in a cannabis related business is on the cultivation/manufacturing/processing side rather than on the retail/dispensing side of the business. However, there could still be some environmental or environmentally related concerns that the owner or operator of a retail/dispensing shop should be mindful of. The most notable environmental issue for any retail or dispensing shop is likely to be the surprisingly complex issue of disposal of unused or discarded marijuana or cannabis related waste.

Marijuana is valuable, but as previously noted it is still a drug and, despite any potential change in its legal status by the State of New Jersey or the federal government, it remains, for now, a Schedule I drug under federal law. Therefore, there is a legitimate concern that marijuana waste, even after it has been legalized, must not be disposed of in a location or a manner that children or animals can come in contact with it and ingest it. A related concern is that any unused marijuana that is to be treated as waste is not intercepted and sold or used in an unregulated manner by persons who may gain access to the waste stream before ultimate disposal has occurred. Additionally, if the growing of these plants is also going to be strictly regulated, and as discussed below this is likely to be true, there will be concern that the plant seeds are themselves not disposed of in a manner that could promote uncontrolled growing of the plant as a weed due to poor waste disposal practices. Further, given that waste is, technically, considered to be a commodity whose importation across state lines cannot be prohibited under the federal Commerce Clause (except in certain instances), waste disposal laws and/or protocols will likely have to be worked out between and among the various states to determine how, and even if, legal marijuana waste that may legally originate in one state can be legally transported across state lines for disposal in another state that may still have laws on its books prohibiting the possession or importation of marijuana generally.

Therefore, any marijuana based waste – whether it is stale or unsold pot, discarded stems and seeds, etc. – will likely need to be controlled in a manner not too different from how hazardous waste, asbestos waste, and other selected wastes are presently disposed of, as a condition of cannabis legalization in New Jersey. This also presupposes the possible implementation of a licensing scheme whereby only certain designated waste haulers will even be permitted to haul away the marijuana waste, and only certain designated landfills, incinerators,

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recyclers or other disposal facilities will be allowed to accept it. Additionally, from the perspective of the owners and operators of a retail store or dispensary, they will need to familiarize themselves with such waste disposal laws and take steps to comply with them, starting with, but not necessarily limited to, contracting only with reputable waste disposal contractors who are fully licensed to actually handle marijuana related waste and who will only take the waste to disposal locations that are also fully licensed to accept same.

Environmental Considerations for Those Interested in Owning and/or Operating a Marijuana Growing Facility or Farm in New Jersey

A number of official/governmental studies and books have looked at the environmental impacts of illegal marijuana growing in other areas, such as Northern California and the Pacific Northwest. The conclusions have been that the environmental impacts of such a massively unregulated agribusiness have been multifaceted and harmful to the environment. Documentable environmental impacts include the:

- illegal diverting of water from rivers and streams, which some studies have suggested even contributed to the severity of California's last drought and has also contributed to the decline of fish, like salmon, and other animals, like black bear;
- indiscriminate use of rat poison to keep deer, fishers and other smaller animals away from the crops that has resulted in the deaths of many wild animals, including some threatened and endangered species, not to mention the poisoning of certain water bodies with rat poison;
- illegal razing of forests and woods and the use of bulldozers that have contributed to landslides and other interference with the ecological food chain, as well as the negative carbon footprint consequences of deforestation;
- removal of underbrush which has contributed to erosion and the further degradation of water quality in formerly pristine rivers and streams;
- use of banned pesticides on the marijuana crop that has also resulted in environmental contamination, not to mention jeopardizing the health of persons who may consume the illegally treated crop;
- unpermitted draining and/or filling of wetlands and interferences with the vegetation supporting the riparian corridor of streams; and
- the associated increases in flooding and unpermitted stormwater runoff; etc. The list goes on.

To the extent any or all of these impacts are currently taking place with illegal marijuana cultivation in New Jersey, allowing for managed cultivation of marijuana crop under the most rigorously controlled conditions should be a positive force for reduction of such impacts in our State.

However, this is not to say that there may not still be environmental issues to be addressed with licensed marijuana cultivation in New Jersey:

- **Location**. If the location where a cannabis cultivation/processing facility is at a brownfield property, there may be environmental site remediation issues that must first be completed before the property, or any facility located on it, can be used for actually growing crops. There are also likely to be restrictions imposed on the manner and location by which waste products associated with the marijuana cultivation and processing will be allowed to be disposed.

- Marijuana grown inside requires large numbers of grow lights, and all of that lighting consumes massive amounts of power. Adding to the burden will be additional power consumption to run air venting and other climate control systems, as well as any machinery and other systems or devices needed to run what is, by any measure, truly an industrial operation. There are both individual and societal costs to all of this electrical consumption. The costs to the individual grower should be obvious – electrical charges will be high. But the societal costs are more insidious: In states in which marijuana has been legalized, there have been sharp increases in electrical consumption resulting from the new grow facilities. In Colorado, nearly half of all new power demand is from marijuana operations. Some of this power demand can be lessened by the grow facilities switching from high pressure sodium lights, which are the more traditional grow lights, to LED lights that consume five to ten times less electricity, but the trade-off is that LED lights are more expensive. Other means by which growers might reduce electricity and environmental impacts, are by installing solar panels at a new facility or opting to construct greenhouses instead of using contained buildings. Ultimately, either the State or a municipal government might step in and mandate such energy reduction tactics as those mentioned above as a condition to granting a license and other approvals for a grow facility to exist.
- **Marijuana cultivation is also water intensive.** In locations where a facility can tap into a public utility or municipal water line, the primary water allocation issue will be cost. But if a number of such facilities become concentrated in a small area – and this could well turn out to be the case – it could place a strain on the amount of water that the utility is capable of delivering to all of its customers, thereby triggering requests to the State to increase the utility's allowed water allocation by permit. These requests by utilities are not taken lightly by the New Jersey Department of Environmental Protection (NJDEP), and even when granted often result in conditions imposed on a utility to decrease water consumption and leakage throughout the utility's entire infrastructure, at increased overall costs to all of the utility's customers through higher utility rates. In locations that do not have ready access to finished water lines, a marijuana grower will have to address its water needs by either installing wells or diverting water from a nearby surface water body for irrigation. Current New Jersey law allows certain relaxations from the usual requirement for any water user to obtain a water allocation permit from the NJDEP where the usage of water does not exceed 100,000 gallons per day and the water use is for agricultural, aquacultural or horticultural purposes. However, without getting into too much detail, certainly a question that will be asked is whether commercial pot growing is, indeed, in the same category as, for example, soy bean cultivation or growing flowers.
- **Wastewater disposal issues**. If pesticides are used in the grow facility and are then washed off the plants during the irrigation process or during the processing phase, that may trigger certain obligations by the grower to treat the wastewater to meet industrial standards before a wastewater treatment utility would consent to accept effluent from the facility. Likewise, the facility might have to treat the wastewater to acceptable standards before it is allowed to release the effluent into the environment via a discharge permit to be obtained from the NJDEP.
- **Pesticide Usage**. Finally, it seems likely that the State will have to develop standards to govern the use of pesticides by licensed marijuana grow facilities. Because cannabis remains illegal under federal law at this time, there are no existing standards that the NJDEP or the New Jersey Department of Health can consult to guide them with respect to which particular pesticides can and cannot be used, and in what quantities and with what frequency. Those decisions can expect to have to be made by the State as part of the licensing process.

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