

Medical Marijuana Update/ Disposal Impacts

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**Three combined posts every business day
addressing federal/Arkansas legislation,
regulation, administrative/judicial decisions
and personnel transitions**

Arkansas Medical Marijuana Amendment

- ▶ Decriminalizes (from a state [Arkansas] standpoint) certain use of marijuana
- ▶ Establishment of regulation of cultivators and dispensaries
- ▶ Does not require “Employer to accommodate the ingestion of marijuana in a workplace or an employee working under the influence of marijuana.”
- ▶ Outlines process pursuant to which an individual can become a “Qualifying Patient” who can use medical marijuana
- ▶ Doctor certifies he/she has a “Qualifying Medical Condition”
- ▶ Does restrict an employer’s ability to discriminate against Qualifying Patient unless safety sensitive position
- ▶ Alcohol Beverage Control Regulations address medical marijuana waste disposal requirements

Not Legal

- ▶ Marijuana is still illegal at the Federal level
 - DEA Schedule I controlled substance
 - Substances in this schedule have no currently accepted medical use in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse
- Obama Administration Attorney General relaxed federal enforcement
- Trump Administration sending mixed messages




Arkansas passage of the Arkansas Medical Marijuana Amendment (“AMMA”) of 2016 set in motion fast-paced efforts to put in place rules that will allow the cultivation, processing, dispensing, and purchase of marijuana for medicinal-related consumption.

Marijuana will likely begin to be dispensed for medicinal purposes in the next few months.

The legalization of certain uses/cultivation of marijuana in Arkansas will generate a host of legal issues including healthcare, insurance, banking, OSHA, etc.

The solid waste disposal industry arguably faces two key challenges:

- Employment issues associated with employees’ legal use of medical marijuana (safety has been and remains a huge issue in the industry)
- Federal and state environmental issues applicable to both disposal and other wastes generated by cultivation, processing and dispensing



We will briefly discuss key employment issues and then focus on issues associated with disposal such as:

- Wastes generated (variety of wastes may be generated)
- Disposal/treatment activities
- Potentially applicable federal and state environmental legal requirements
- Contract Issues/Allocation of liability

Labor/Employment Issues

- The solid waste industry will, like all Arkansas employers, face challenges addressing employee use of medical marijuana.
- Arguably more difficult challenge because of the serious safety activities associated with waste management activities

Why?

Arkansas Amendment Non-Discrimination Provision

- Non-compliance with the Arkansas Medical Marijuana Amendment of 2016 (AMMA) can pose significant risks for an employer. It includes a non-discrimination provision directed at employers. The provision provides that:
 - “An employer shall not discriminate against an applicant or employee in hiring, termination, or any term or condition of employment, or otherwise penalize an applicant or employee, based upon the applicant’s or employee’s past or present status as a qualifying patient or designated caregiver.”

Violation can result in damage claim.

Employer Issues/Suggestions

Create Written Job Descriptions which Designate Safety Sensitive Positions within your Organization?

The AMMA permits employers to “exclude a qualifying patient from being employed in or performing a safety sensitive position based on the employer’s good faith belief that the qualifying patient was engaged in the current use of marijuana.”

Safety sensitive position is defined as “any position designated in writing by the employer as a safety sensitive position in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety.

Creating written job descriptions which designate certain jobs as “safety sensitive positions” permits employers to exclude job applicants and employees with medical marijuana registry ID cards from those positions.

Labor/Employment Issues

- Employees shown to be “impaired” on the job may be disciplined and discharged by an employer.
- Employees handbook should specifically address/ban use of medical marijuana in workplace.
- Institute policy that requires employees to disclose use of medications that may impair their ability to work if this request is job-related and consistent with business necessity
- Federal government contractors subject to the Drug Free Workplace Act of 1988 should continue to follow all of the requirements of the Act, even in states permitting marijuana use by employees
- Department of Transportation- substance abuse regulations may trump state marijuana laws

Labor/Employment Issues

- Businesses should train their frontline supervisors and managers to identify when an employee may be under the influence of marijuana during their hours of employment.
- The observation of these physical symptoms supports the administration of a drug test, which if positive supports the employer taking action against the employee assuming the proper policies are included in the employer's handbook.
- "Good faith belief" means a reasonable reliance on fact and can be based on observed conduct, behavior or appearance, information reported by a person believed to be reliable, or written, electronic or verbal statements from the employee or other persons.
- A manager or supervisor deciding whether to administer a drug test to an employee must be able to identify not only the source of the information on which he or she is acting, but also why their reliance on the information is reasonable.

Arkansas Agencies that Oversee Medical Marijuana

- Arkansas Medical Marijuana Commission
- Alcohol Beverage Control (“ABC”)
- Arkansas Department of Health (“DOH”)

ABC administers regulations addressing facility security, packaging, quality control, structure design, etc. and disposal of medical marijuana wastes

DOH addresses doctor certifications, qualifying patients, etc.

Federal/Arkansas Environmental Disposal Issues

- ABC (specific regulation of medical marijuana disposal)
 - Is medical marijuana rendered “unusable”?
- Federal/Arkansas (unusable complies with applicable environmental regulations)

Medical Marijuana Wastes?

Plants (including stalks, roots/soil) and Unusable Marijuana

Liquid Concentrate or Extract

(extraction an industrial process?)

- Is the concentrate a RCRA hazardous waste?

Solid Concentrate or Extract

(extraction an industrial process?)

- Is the concentrate a hazardous waste?

Examples from these categories

- Trim and solid plant material used to create an extract
- Waste solvent
- Laboratory waste
- Extract that fails to meet quality testing
- Used reactants
- Residual pesticides/fertilizers
- Cleaning solution
- Lighting ballasts

ABC Regulations

- **RR 18.1 Disposal of Marijuana by Cultivation Facilities and Dispensaries.** All medical marijuana waste shall be disposed of in accordance with this rule.
 - a. All medical marijuana waste shall be stored in a secure, limited access area on the premises of the cultivation facility or dispensary.
 - b. All medical marijuana shall be rendered unusable pursuant to the methods set forth in this rule prior to disposal.
 - c. All steps taken to render the marijuana unusable shall be conducted under video surveillance by the licensed facility's video surveillance system
 - d. All medical marijuana waste set for disposal shall be properly weighed and recorded in the Inventory Tracking System.


- e. A cultivation facility or dispensary shall notify the Division at least three (3) business days prior to rendering the medical marijuana waste unusable and disposing of it. The notification shall include the weight of the marijuana to be rendered unusable
- f. Medical marijuana shall be rendered unusable by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mix is at least 50% non-cannabis waste by volume.

“Division” is a reference to ABC

- g. Medical Marijuana waste rendered unusable by the methods described in section (2), may be delivered to a permitted solid waste facility for final disposition. Permitted solid waste facilities may include:
 - i. Compostable Mixed Waste: Compost, anaerobic digester, or other facility approved by the Division.
 - ii. Noncompostable Mixed Waste: Landfill, incinerator, or other facility approved by the Division.

The following acceptable materials may be combined with cannabis plant waste:

- i. Compostable Mixed Waste: Cannabis waste to be disposed of as compost, feedstock, or in another organic waste method may be mixed with the following types of waste materials:
 1. Food waste;
 2. Yard waste;
 3. Vegetable based grease oils;
 4. Agricultural Materials
 5. Biodegradable products and paper;
 6. Clean wood;
 7. Fruits and vegetables; or
 8. Plant matter.

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- ii. Noncompostable Mixed Waste: Cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, may be mixed with the following types of waste materials.
 1. Paper waste;
 2. Cardboard waste;
 3. Plastic waste;
 4. Soil;
 5. Nonrecyclable plastic; or
 6. Broken glass.

Service/Disposal Agreements

- Potential liability for improper disposal of medical marijuana wastes
- Allocate liability in service agreements
- Generator warrant/certification waste meets definition of unusable
- Use of waste profile
- Provisions for indemnity, rejection, expense for sending back, etc.

Note: Landfills operating procedures may consider need for immediate burial, etc., to prevent scavenging.

Potentially Applicable Environmental/Safety Regulatory Requirements Not Specific to Marijuana (but may affect these facilities and wastes they generate)

1. Pesticides/Fungicides/Insecticides/Herbicides Restrictions
 - a. Utilized in various stages of cultivation and processing
 - b. Labeling/use restrictions/requirements
 - i. Federal Insecticide Fungicide Rodenticide Act (“FIFRA”)
 - ii. States Implementing/Enforcing FIFRA regulations


2. State Air Requirements
 - a. Permitting
 - i. Potential Emission Sources
 - A. Boilers/Generators/Heating Units
 - B. Processing/Use of Solvents for Extraction (volatile organic compounds)
 - b. Odor Issues

3. Solid Waste Management Requirements

- a. Restrictions on availability of composting for marijuana-related solid waste such as vegetative material and used plant growth soil
- b. Restrictions on availability of landfills, transfer facilities, or transport for marijuana-related waste

4. Hazardous Waste Management Requirements

- a. Marijuana processing and cultivation activities can generate hazardous wastes (discarded solvents, chemicals, etc.) triggering Resource Conservation and Recovery Act (“RCRA”) Subtitle C (or state equivalent) requirements

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5. State Wastewater Requirements
 - a. Clean Water Act/National Pollution Discharge Elimination System permits for direct discharges from cultivation/processing structures into waterbodies
 - b. Clean Water Act/Pretreatment Requirements imposed on cultivation/processing structures discharging into municipal wastewater treatment plants
 6. Fire Codes
 - a. National Fire Protection Association
 - i. National Fire Protection Association (“NFPA”) task group developing specific Chapter for cultivation/processing facilities
 - ii. NFPA draft report issued in Fall 2016 titled “Marijuana, Growing, Processing and Extraction Facilities”
 - iii. NFPA 58 (Liquefied petroleum gas)
 - b. Local/State Fire Codes