

June 26, 2019

MCR Laboratories
c/o Michael Kahn, Owner
85 Speen Street
Framingham, MA 01701

Case No. 2019A-002-10

Letter of Enforcement Intent

This letter serves as Notice of Intent to seek an administrative action against MCR Laboratories' license to operate an Independent Testing Laboratory at 85 Speen Street, Framingham, MA (Adult-use License No. IL281278; Medical Program License No. LAB1020). The contemplated action arises from an investigation into the Respondent's waste disposal practices. The Cannabis Control Commission, acting through its investigators, found the following violations of the Commission's regulations as cited in its Notice of Deficiencies dated January 28, 2019 and as stated herein.

1. Violation One – Storage of Marijuana.

935 CMR 500.105(12)(a); 935 CMR 501.105(10)(a)

- a. All recyclables and waste, including organic waste composed of or containing finished Marijuana and Marijuana Products, shall be stored, secured, and managed in accordance with applicable state and local statutes, ordinances, and regulations. 935 CMR 500.105(12)(a); 935 CMR 501.105(10)(a).
- b. On January 11, January 12, January 13, and January 14, 2019, on multiple instances, Respondent's employees deposited marijuana waste in an unlocked dumpster located on Respondent's exterior premises. Respondent's employees did not attempt to secure the dumpster before or after its use.
- c. On January 14, 2019, the Commission observed multiple discarded marijuana samples in the unlocked dumpster on Respondent's exterior premises. Commission staff determined that the dumpster was not equipped with any locking mechanism.
- d. As alleged above, waste containing Marijuana and Marijuana Products on the property of the establishment was not stored, secured and managed in accordance with state and local laws and the regulations of the Cannabis Control Commission including 935 CMR 500.105(12)(a) and 935 CMR 501.105(10)(a).



2. Violation Two – Disposal of Liquid Waste.

935 CMR 500.105(12)(b); 935 CMR 501.105(10)(a)

- a. Liquid waste containing Marijuana or by-products of marijuana processing shall be disposed of in compliance with all applicable state and federal requirements, including but not limited to, for discharge of pollutants into surface water or groundwater (Massachusetts Clean Waters Act, M.G.L. c. 21 §§ 26 through 53; 314 CMR 3.00: Surface Water Discharge Permit Program; 314 CMR 5.00: Groundwater Discharge Program; 314 CMR 12.00: Operation Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers; the Federal Clean Water Act, 33 U.S.C. 1251 et seq., the National Pollutant Discharge Elimination System Permit Regulations at 40 CFR Part 122, 314 CMR 7.00: Sewer System Extension and Connection Permit Program), or stored pending disposal in an industrial wastewater holding tank in accordance with 314 CMR 18.00: Industrial Wastewater Holding Tanks and Containers. 935 CMR 500.105(12)(b); 935 CMR 501.105(10)(a).
- b. Respondent disposed of Marijuana mixed with liquid methanol in a solid waste container located on Respondent's licensed premises.
- c. As alleged above, Respondent failed to dispose of liquid waste containing marijuana or by-products of Marijuana processing in accordance with 935 CMR 500.105(12)(b) and 935 CMR 501.105(10)(a).

3. Violation Three – Disposal of Solid Waste.

935 CMR 500.105(12)(c)(3); 935 CMR 501.105(10)(b)

- a. Solid waste containing cannabis waste generated at a Marijuana Establishment may be ground up and mixed with solid wastes such that the resulting mixture renders the cannabis unusable for its original purposes. Once such cannabis waste has been rendered unusable, it may be brought to a solid waste transfer facility or a solid waste disposal facility (e.g., landfill or incinerator) that holds a valid permit issued by the Department of Environmental Protection or by the appropriate state agency in the state in which the facility is located. 935 CMR 500.105(12)(c)(3); 935 CMR 501.105(10)(b).
- b. Respondent disposed of Marijuana that had not been rendered unusable in a solid waste container on Respondent's licensed premises.
- c. Respondent's solid waste dumpsters contained both usable and unusable Marijuana and were not securely locked prior to disposal in accordance with the regulations.
- d. As alleged above, Respondent failed to render Marijuana unusable prior to disposal and failed to dispose of marijuana waste in accordance with 935 CMR 500.105(12)(c)(3) and 935 CMR 501.105(10)(b).

4. Violation Four: Waste Records and Documentation: Recording Manner of Disposal

935 CMR 500.105(12)(d); 935 CMR 501.105(10)(b)(5)

- a. No fewer than two Marijuana Establishment Agents must witness and document how the marijuana waste is disposed or otherwise handled (recycled, composted, etc.) in accordance with 935 CMR 500.105(12). When Marijuana Products or waste is disposed or handled, the Marijuana Establishment must create and maintain a written or electronic record of the date, the type and quantity disposed or handled, the manner of disposal or other handling, the location of disposal or other handling, and the names of the two Marijuana Establishment Agents present during the disposal or other handling, with their signatures. Marijuana Establishments shall keep these records for at least three years. This period shall automatically be extended for the duration of any enforcement action and may be extended by an order of the Commission. 935 CMR 500.105(12)(d); 935 CMR 501.105(10)(b)(5).
- b. On or about January 30, 2019, Respondent provided the Commission with exported data from its Laboratory Inventory Management System (LIMS). The exported LIMS data contained entries for approximately 7,520 samples received by Respondent between the dates of November 1, 2018 and January 23, 2019.
- c. Respondent's waste documentation lacked the manner of disposal or handling of all marijuana sample entries recorded in Respondent's LIMS. Respondent's non-compliance persisted for a period of time no less than 83 days.
- d. As alleged above, Respondent failed to accurately document the manner of disposal 935 CMR 500.105(12)(d) and 935 CMR 501.105(10)(b)(5).

5. Violation Five: Waste Records and Documentation: Recording Location of Disposal

935 CMR 500.105(12)(d); 935 CMR 501.105(10)(b)(5)

- a. No fewer than two Marijuana Establishment Agents must witness and document how the marijuana waste is disposed or otherwise handled (recycled, composted, etc.) in accordance with 935 CMR 500.105(12). When Marijuana Products or waste is disposed or handled, the Marijuana Establishment must create and maintain a written or electronic record of the date, the type and quantity disposed or handled, the manner of disposal or other handling, the location of disposal or other handling, and the names of the two Marijuana Establishment Agents present during the disposal or other handling, with their signatures. Marijuana Establishments shall keep these records for at least three years. This period shall automatically be extended for the duration of any enforcement action and may be extended by an order of the Commission. 935 CMR 500.105(12)(d); 935 CMR 501.105(10)(b)(5).

- b. On or about January 30, 2019, Respondent provided the Commission with exported data from its Laboratory Inventory Management System (LIMS). The exported LIMS data contained entries for approximately 7,520 samples received by Respondent between the dates of November 1, 2018 and January 23, 2019.
- c. Respondent's waste documentation lacked the location of disposal of all marijuana sample entries recorded in Respondent's LIMS. Respondent's non-compliance persisted for a period of time no less than 83 days.
- d. As alleged above, Respondent failed to accurately document the location of disposal pursuant to 935 CMR 500.105(12)(d) and 935 CMR 501.105(10)(b)(5).

6. Violation Six: Waste Records and Documentation: Recording Sample Disposal Quantities

935 CMR 500.105(12)(d); 935 CMR 501.105(10)(b)(5)

- a. No fewer than two Marijuana Establishment Agents must witness and document how the marijuana waste is disposed or otherwise handled (recycled, composted, etc.) in accordance with 935 CMR 500.105(12). When Marijuana Products or waste is disposed or handled, the Marijuana Establishment must create and maintain a written or electronic record of the date, the type and quantity disposed or handled, the manner of disposal or other handling, the location of disposal or other handling, and the names of the two Marijuana Establishment Agents present during the disposal or other handling, with their signatures. Marijuana Establishments shall keep these records for at least three years. This period shall automatically be extended for the duration of any enforcement action and may be extended by an order of the Commission. 935 CMR 500.105(12)(d); 935 CMR 501.105(10)(b)(5).
- b. On or about January 30, 2019, Respondent provided the Commission with exported data from its Laboratory Inventory Management System (LIMS) containing entries for approximately 7,520 samples received by Respondent between the dates of November 1, 2018 and January 23, 2019.
- c. Respondent's waste disposal records lacked disposal quantities for certain samples, including an incident involving sixty (60) samples and arising after implementation of Respondent's plan of correction. Respondent self-reported the incident.
- d. As alleged above, Respondent failed to accurately document amount of marijuana waste disposed pursuant to 935 CMR 500.105(12)(d) and 935 CMR 501.105(10)(b)(5).

7. Violation Seven: Waste Records and Documentation: Recording Signature of Two Marijuana Establishment Agents
935 CMR 500.105(12)(d); 935 CMR 501.105(10)(b)(5)

- a. No fewer than two Marijuana Establishment Agents must witness and document how the marijuana waste is disposed or otherwise handled (recycled, composted, etc.) in accordance with 935 CMR 500.105(12). When Marijuana Products or waste is disposed or handled, the Marijuana Establishment must create and maintain a written or electronic record of the date, the type and quantity disposed or handled, the manner of disposal or other handling, the location of disposal or other handling, and the names of the two Marijuana Establishment Agents present during the disposal or other handling, with their signatures. Marijuana Establishments shall keep these records for at least three years. This period shall automatically be extended for the duration of any enforcement action and may be extended by an order of the Commission. 935 CMR 500.105(12)(d); 935 CMR 501.105(10)(b)(5).
- b. On or about January 30, 2019, Respondent provided the Commission with exported data from its Laboratory Inventory Management System (LIMS). The exported LIMS data contained entries for approximately 7,520 samples received by Respondent between the dates of November 1, 2018 and January 23, 2019.
- c. Respondent's waste documentation lacked the signature of at least two ITL agents witnessing the disposal of all marijuana sample entries recorded in Respondent's LIMS. Respondent's non-compliance persisted for a period of time no less than 83 days.
- d. On January 11 and January 12, 2019, Respondent's employees disposed of marijuana waste in an unlocked dumpster on at least seven instances without the accompaniment of a second laboratory agent to witness and document disposal of waste.
- e. As alleged above, Respondent failed to ensure two agents were present during the disposal and handling of marijuana sample entries and document their signatures on the waste disposal record pursuant to 935 CMR 500.105(12)(d) and 935 CMR 501.105(10)(b)(5).

8. Violation Eight – Testing Requirements.
935 CMR 500.160(8); 935 CMR 501.105(3)(b)(11)

- a. All excess Marijuana must be disposed in compliance with 935 CMR 500.105(12), either by the Independent Testing Laboratory returning excess Marijuana to the source Marijuana Establishment for disposal or by the Independent Testing Laboratory disposing of it directly. 935 CMR 500.160(8); 935 CMR 501.105(3)(b)(11).

- b. Respondent's waste disposal records lacked disposal quantities for certain samples including an incident involving sixty (60) samples and arising after implementation of Respondent's plan of correction. Respondent self-reported the incident.
- c. Respondent's violations of the Commission's waste disposal regulations result in a derivative violation of the express testing requirements set forth 935 CMR 500.160; 935 CMR 501.105(3)(b)(11).

9. Violation Nine – Public Security and Diversion.

935 CMR 500.110(1)(g); 935 CMR 501.110(1)(f)

- a. A Marijuana Establishment shall implement sufficient safety measures to deter and prevent unauthorized entrance into areas containing Marijuana and theft of Marijuana at the Marijuana Establishment. Security measures taken by the licensee to protect the premises, employees, consumers and general public shall include, but not be limited to, the following . . . Keeping all safes, vaults, and any other equipment or areas used for the production, cultivation, harvesting, processing or storage of Marijuana Products securely locked and protected from entry, except for the actual time required to remove or replace Marijuana. 935 CMR 500.110(1)(g); 935 CMR 501.110(1)(f).
- b. Respondent's failure to securely store Marijuana and Marijuana Products exposed the general public to a health and safety risk and posed a risk of diversion.
- c. As alleged above, Respondent failed to comply with 935 CMR 500.110(1)(g) and 935 CMR 501.110(1)(f).

Based on the foregoing, I have determined that Respondent's conduct constitutes full and adequate grounds for taking an enforcement action pursuant to 935 CMR 500.450(6); 935 CMR 501.405(6); 935 CMR 500.450(12); 935 CMR 501.405(13); 935 CMR 500.450(14); 935 CMR 501.405(15) and 935 CMR 500.550.

Accordingly, I intend to recommend to the Executive Director the issuance of a notice of violations and order to suspend (no less than 30 days), revoke and/or impose monetary fines against Respondent's license. In making this recommendation, I have considered the severity of Respondent's actions, the risk of diversion created by those actions, and the Respondent's capacity to otherwise avoid non-compliance to the regulations. I have also considered these violations in light of the integral role of Independent Testing Laboratories in fostering public trust in the Commonwealth regarding cannabis testing practices and standards. Respondent's non-compliance compromised the public trust and confidence in the integrity of the Commonwealth's regulated cannabis industry. Please be aware, upon the Commission's issuance of a notice of violations and order, Respondent may request a hearing within twenty-one days to show cause why the license should not be suspended, revoked or subject to monetary fines as specified in the order.

However, prior to recommending the Commission take an enforcement action in this matter, I have determined that it may be appropriate to schedule an informal Dispute Resolution Conference to determine whether the parties may reach a stipulated agreement to resolve the outstanding enforcement action. A stipulated agreement may include a suspension, revocation, imposition of a fine, or a combination thereof. In making the determination that this matter may be appropriate for a dispute resolution conference, I have considered Respondent's efforts to remediate the cited violation, including the submission of a plan of correction (dated February 14, 2019) and the Investigations and Enforcement Department's (IED) determination of substantial implementation of that plan after re-inspection on April 9, 2019.

Informal Dispute Resolution


Prior to recommendation or issuance of a notice of violations and order to show cause, this letter shall afford the Respondent an opportunity to engage in a voluntary dispute resolution conference. The purpose of the conference is to determine whether the Commission and Respondent may reach a mutually agreeable resolution of the matter without proceeding to administrative hearing.

Participation in an informal dispute resolution conference is voluntary and may be declined or withdrawn at the option of either party. Accepting, declining or withdrawing from participation in a dispute resolution conference shall not affect the determination of sanction or otherwise form an adverse inference against the Respondent. Statements made during informal dispute resolution proceedings are not admissible at any subsequent stage of administrative proceedings, unless those statements can be learned or obtained from another independent source.

Any settlement reached through an informal dispute resolution conference shall be subject to ratification by majority vote of the Cannabis Control Commission or its designee and shall not become effective until Commission ratification.

To request an informal dispute resolution conference, please complete and return the attached form within ten (10) days of the date of this letter as stated above.

Sincerely,



Yaw Gyebi, Jr., Esq.
Chief of Investigations and Enforcement
Cannabis Control Commission

cc: Shawn Collins, Executive Director
Paul Payer, Enforcement Counsel
Patrick Beyea, Director of Investigations