

FILED

August 3, 2023

ADMINISTRATIVE
HEARING COMMISSION

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

DELTA EXTRACTION, LLC
5281 Willow Ford Rd
Robertsville, MO 63072 (314/616-9063)

Petitioner,

v.

MISSOURI DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Paula F. Nickelson, Director
912 Wildwood, P.O. Box 570
Jefferson City, MO 65102 (573/751-6400), and

Division of Cannabis Regulation
Amy Moore, Director
912 Wildwood, P.O. Box 570
Jefferson City, MO 65102 (573/751-6400)

Respondents.

AHC No. _____

COMPLAINT

Petitioner Delta Extraction, LLC (“Delta Extraction”) appeals the August 2, 2023 final decision of the Respondent Department of Health and Senior Services (“DHSS”) that Petitioner must immediately suspend operations. Respondent’s decision should be overturned and Petitioner should be allowed to re-start its operations.

PARTIES

1. Petitioner Delta Extraction is a Missouri limited liability company organized under the laws of Missouri. Delta Extraction is a marijuana infused products manufacturer possessing license number MAN00022 granted by the Missouri Department of Health and Senior Services.

2. Respondent DHSS is a state agency created by statute. DHSS is charged with licensure and regulation of marijuana infused products manufacturers.

3. Respondent Division of Cannabis Regulation is a division within DHSS responsible for regulating the adult use of cannabis.

JURISDICTION

4. A marijuana infused products manufacturer license holder “may seek review” of DHSS’s decision to impose penalties. 19 CSR-100.1.020(4)(A).

5. Petitioner timely filed this complaint. 19 CSR-100.1.020(4)(B).

6. This Commission has jurisdiction over this matter. 19 CSR-100.1.020(4).

BACKGROUND

7. On August 2, 2023, Delta Extraction received a letter from DHSS ordering the immediate suspension of Delta Extraction’s operations. A true and correct copy of that letter is attached as **Exhibit A.**

8. That letter states that the Division of Cannabis Regulation (“DCR”) has determined:

a. “A credible report, through allegations supported by data from the statewide track and trace system (Metrc) of inversion of marijuana product at the licensed facility”;
and

b. “A credible report, through data from the statewide track and trace system (Metrc) which demonstrates that the Licensee is permitting marijuana product to enter the regulated market without being compliantly tested.” Ex. A.

9. Due to these two vague reasons, DHSS ordered Delta Extraction to cease all operations at 5:00 p.m. on August 2, 2023. *See* Ex. A.

10. The letter also serves as a “notice of investigation.” Ex. A.

11. Delta Extraction was advised that DHSS's letter is a final decision, appealable to the Administrative Hearing Commission. Ex. A.

APPEAL

12. Delta Extraction appeals DHSS's determination that there is a "credible and imminent threat to public health that warrants immediate suspension of the license." Ex. A.

13. Delta Extraction further appeals DHSS's order that Delta Extraction immediately suspend operations. *See* Ex. A.

WHEREFORE, Petitioner hereby appeals Respondent's decision to suspend its license and order that it immediately cease operations and requests that this Commission conduct a hearing in this matter and issue an Order directing Respondent to remove the suspension of Petitioner's license and allow Petitioner to begin operations. Petitioner requests such other and additional relief as the Commission deems just and proper.

Dated: August 3, 2023

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Exhibit A



Missouri Department of Health and Senior Services

P.O. Box 570, Jefferson City, MO 65102-0570 | Phone: 573-751-6400 | FAX: 573-751-6010
RELAY MISSOURI for Hearing and Speech Impaired and Voice dial: 711



Paula F. Nickelson
Director

Michael L. Parson
Governor

ORDER OF IMMEDIATE SUSPENSION

August 2, 2023

Delta Extraction, LLC, MAN000022
Ms. Rachael Herndon
5281 Willow Ford Rd
Robertsville, MO 63072

Subject: Order of Immediate Suspension

Dear Ms. Herndon,

Pursuant to Article XIV Section 2 4.(1)(a) and 19 CSR 100-1.020(3), the Department of Health and Senior Services may immediately suspend all or part of the operations of a marijuana facility where there is a credible and imminent threat to public health or public safety.

Pursuant to 19 CSR 100-1.020(3)(A)4 and 19 CSR 100-1.020(3)(G)1, the Division of Cannabis Regulation (DCR), Section for Compliance and Enforcement is issuing Delta Extraction, LLC, MAN000022 an *Order of Immediate Suspension*.

DCR has determined there is a credible and imminent threat to public health that warrants immediate suspension of the license. Specifically:

1. A credible report, through allegations supported by data from the statewide track and trace system (Metrc) of inversion of marijuana product at the licensed facility.
2. A credible report, through data from the statewide track and trace system (Metrc) which demonstrates that the Licensee is permitting marijuana product to enter the regulated market without being compliantly tested.

Therefore, DCR ORDERS the Licensee to immediately suspend operations as follows:

- The Licensee shall immediately stop all operations and activities, including off-site operations and activities related to the Licensee, such as seed-to-sale system and statewide track and trace system (Metrc) entries.
- No marijuana product shall be moved or altered in any way, including physically or in the statewide track and trace system (Metrc). All marijuana in the facility or originating from the Licensee will be placed on administrative hold in Metrc by DCR.
- The Licensee shall secure all marijuana product in the facility immediately such as moving all marijuana product to the vault or storage area.
- The Licensee shall secure the facility and shall not allow any personnel, including owners or security guards, to enter the facility.
- The Licensee shall immediately work with DCR, through their compliance officer, to reestablish remote access of the Licensee's electronic video monitoring system. Pursuant to 19 CSR 100-1.020(3)(A)2, DCR

PROMOTING HEALTH AND SAFETY

The Missouri Department of Health and Senior Services' vision is optimal health and safety for all Missourians, in all communities, for life.

will begin to assess the Licensee fines for each day the Licensee is in violation of 19 CSR 100-1.090(1)(C)2.

The Licensee shall follow standard operating procedures pursuant to 19 CSR 100-1.100(4)(J) to cease operations.

This order also serves as notice of investigation pursuant to 19 CSR 100-1.030(2)(B)5. Until the Licensee receives written notice from DCR that the investigation is concluded, the Licensee must preserve all records of any type related to the subject of this investigation, including all video camera recordings and facility access controls records. The Licensee is to notify DCR in writing at CannabisComplaints@health.mo.gov, prior to 5pm CST today, that all records have been preserved, the means in which the records have been preserved, and the location of these records.

Pursuant to 19 CSR 100-1.030(2)(C), licensees “must cooperate in any investigation conducted by the Department.” Failure to cooperate with a Department investigation may be grounds for penalties, including fines, suspension, or revocation of the license.

The Licensee must immediately, but prior to 5pm CST today, reply in writing to DCR at CannabisComplaints@health.mo.gov indicating the following:

1. That the order has been received and that the licensee intends to comply.
2. Verify that all operations for the Licensee has ceased and all personnel have been removed from the facility, with except to staff designated by DCR.
3. Verify personnel will not have access to the facility and/or will not complete any activities related to the Licensee, including seed-to-sale system and statewide track and trace system (Metrc) entries. The Licensee shall remove access privileges for all employees and provide verification that access privileges have been removed. The Licensee shall provide a daily electronic log of controlled entry for the facility to DCR at CannabisComplaints@health.mo.gov by 9am CST for the previous day until the Licensee receives written notice from DCR.
4. Verify that the Department will have access to the facility, including records, at any time including the availability of the designated contact or an employee who has the knowledge and ability to access all areas of the facility or records.
5. Understand that all Department approvals during suspension will be provided in writing.

DCR will schedule a conference call with the Licensee to further advise the Licensee of the nature of the investigation and this order within forty-eight (48) hours of issuing the Order.

During the suspension, the Licensee must maintain compliance with all applicable requirements outlined within 19 CSR 100-1, for example, facility security, such as electronic video monitoring and access control requirements. In addition, no personnel shall enter the facility without DCR written approval.

Pursuant to 19 CSR 100-1.020(4), the Licensee may appeal this decision by filing a petition with the Missouri Administrative Hearing Commission within thirty (30) days of the date this decision is sent, which is the date stated above.

For questions or additional information regarding this order, please reach out to DCR at CannabisComplaints@health.mo.gov.

Andrea Balkenbush, Deputy Director

Division of Cannabis Regulation
Department of Health and Senior Services

cc: Joshua Stockman, Bureau of Investigation & Enforcement, Manager
Kourtney Blomberg, Investigation Supervisor
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Sarah Burch, Bureau of Business Licensing Services, Manager
Bruce Dooley, Facility Compliance Manager
Brittany Kirkweg, Section for Compliance & Enforcement, Deputy Director
Amy Moore, Division of Cannabis Regulation, Director