

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT

DIVISION: _____

CASE NO: 21-CI-_____

Electronically Filed

KENTUCKY HEMP ASSOCIATION

AND

KY GIRL HEMP, LLC

AND

ROCKY RIDGE HEMP CO., LLC

PLAINTIFFS

v.

Hon. RYAN QUARLES

Kentucky Commissioner of Agriculture, in his official capacity

105A Corporate Drive

Frankfort, Kentucky 40601

AND

Colonel Phillip Burnett Jr.

Kentucky Commissioner of State Police, in his official capacity

Kentucky State Police Headquarters

919 Versailles Road

Frankfort, KY 40601

DEFENDANTS

Also Serve:

Hon Daniel Cameron, Kentucky Attorney General

700 Capitol Ave., Suite 118

Frankfort, Kentucky 40601-3449

Via ServetheCommonwealth@ky.gov

**PLAINTIFFS' VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF**

Introduction

1. Kentucky's hemp industry is a fledgling industry, largely enabled by the 2014 and 2018 Farm Bills, as well as General Assembly legislation that has enabled the industry to make

use of hemp products. According to information provided by licensed hemp processors to the KDA in an end-of-year filing, processors and handlers reported \$130 million in gross product sales in 2020. As the Court will see, Kentucky law generally tracks with federal law, and federal law exempts from the definition of controlled substances “Hemp,” which was defined in the 2018 Farm Bill. 7 U.S.C. 1639o. It states:

(1) Hemp. The term “hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

That definition carries over into various federal and state laws.¹ Plaintiffs, their industry, and their businesses, have complied with these laws, but two events in 2021 have dealt a crippling blow to the industry and a potential billion-dollar impact to Kentucky’s economy, hemp growers, producers, and retail store owners. On April 19, 2021, the General Counsel from the Kentucky Department of Agriculture (“KDA”) authored certain Guidance concerning products that contain delta-8 tetrahydrocannabinol (“Delta-8”), not as a regulation, but merely as a policy statement (collectively the “April Guidance”). Following that, in recent weeks, law enforcement, including the Kentucky State Police, have undertaken enforcement activities, including arrests, raids on retail shops, threats of arrest, and product seizures of products containing Delta-8 (collectively the “Delta-8 Enforcement”),² even though the products contain a delta-9

¹ Kentucky law incorporates this definition of “Hemp.” KRS 260.850(5); KRS 260.8635. It also includes testing for hemp that is limited to delta-9 tetrahydrocannabinol. KRS 250.355; KRS 260.858.

² This is particularly curious when one considers the final USDA Rule on Hemp and Hemp products, where, at page 89-90, the USDA concludes that “Delta-8 THC is unrelated to the 0.3 percent delta-9 THC limit or the ‘post-decarboxylation delta-9 THC’ that are defined and required in this final rule.” <https://public-inspection.federalregister.gov/2021-00967.pdf> (last visited 7/11/2021).

tetrahydrocannabinol (“Delta-9”) concentration of not more than 0.3 percent on a dry weight basis. The reaction to these activities, perhaps intended by the Defendants herein, has sent shockwaves throughout the Kentucky Hemp industry, and if that was the intent, it has succeeded. This lawsuit follows.

Parties

2. Plaintiff, Kentucky Hemp Association (“KYHA”) is a professional organization composed of hemp farmers and processors, as well as retailers who market and sell hemp-based goods. It is a membership-based non-profit trade group, which seeks to encourage the research and development of new products made from industrial hemp, while offering our members a network of like-minded, trusted individuals. KYHA and its members engage in issue advocacy to legislators, and, if necessary, it brings lawsuits such as the present case to advocate on behalf of Kentucky’s hemp industry. Among other things, expansion of hemp derived products, including Delta-8 products that do not have a prohibited Delta-9 concentration within the Commonwealth is central and germane to the KYHA’s purpose. The KYHA’s members have been harmed by the April Guidance and the Delta-8 Enforcement, and the KYHA itself has been harmed by these actions, because the effect of the April Guidance and the Delta-8 Enforcement has diminished demand for hemp-derived products within the Commonwealth, constituting less revenues to the KYHA.
3. Plaintiff, KY Hemp Girl, LLC is a retail store, located and with a residence at 2618 Burlington Pike, Boone County, Kentucky, which, among other things, sells cannabidiol (“CBD”), and, until the April Guidance and the Delta-8 Enforcement, carried Delta-8 products that do not have a prohibited Delta-9 concentration. When the KDA issued their

April Guidance, and Kentucky State Police began their raids and other Delta 8

Enforcement, its owner directed that the Delta-8 products that do not have a prohibited Delta-9 concentration be pulled from the shelf and immediately ceased sales of these products. This has caused a serious detrimental impact on the business. To be clear, but for the April Guidance and Delta 8 Enforcement, KY Hemp Girl, LLC would sell Delta-8 products that do not have a prohibited Delta-9 concentration. KY Hemp Girl, LLC is a member of the Kentucky Hemp Association.

4. Plaintiff, Rocky Ridge Hemp Co., LLC, is a hemp farming and production company, located in Cynthiana, Kentucky. It has both a hemp grower and processor license from the Kentucky Department of Agriculture. Rocky Ridge Hemp Co., LLC is a member of the Kentucky Hemp Association.
5. Defendant, Hon. Ryan Quarles, is the Kentucky Commissioner of Agriculture. He is sued solely in his official capacity. His duties are varied, and largely contained within KRS Chapter 246. However, as relates to this matter, the Commissioner is sued relative to his duties contained in KRS Chapter 260.
6. Defendant, Colonel Phillip Burnett Jr., is the Commissioner of the Kentucky State Police. He is sued solely in his official capacity. His duties are varied, but, pursuant to KRS 16.060, those duties include the duty “to detect and prevent crime, apprehend criminals, maintain law and order throughout the state, to collect, classify and maintain information useful for the detection of crime and the identification, apprehension and conviction of criminals and to enforce the criminal, as well as the motor vehicle and traffic laws of the Commonwealth.”

Jurisdiction and Venue

7. This Court has jurisdiction over these claims pursuant to KRS 23A.010 and Ky. Const. § 112(5).
8. Venue is proper under KRS 452.005 because this matter “(a) Challenges the constitutionality of a Kentucky ... (4) Order of any cabinet, program cabinet, or department established under KRS Chapter 12; (b) Includes a claim for declaratory judgment or injunctive relief; and (c) Is brought individually, jointly, or severally against (1) Any state official in his or her official capacity, including any public servant as defined in KRS 11A.010” and (2) A plaintiff who is a resident of Kentucky shall file a complaint or petition in the office of the Circuit Court clerk in the county where the plaintiff resides. If more than one (1) plaintiff is a party to the action, the complaint or petition may be filed in any county where any plaintiff resides.”
9. Further, pursuant to KRS 452.005, the plaintiffs hereby certify in the complaint or petition filed under this section that a copy of the complaint or petition has been served upon the Attorney General before or at the time of filing, and the Attorney General shall be entitled to be heard.

Legal Background on Hemp in the Commonwealth

10. From the founding of the United States, until 1937, the growth of hemp in the United States was a staple and important industry in this country.³
11. George Washington himself was known to extol the virtues of hemp, and grew hemp at Mount Vernon.⁴

³ <https://www.pbs.org/newshour/nation/8-things-didnt-know-hemp> (last visited 7/10/2021).

⁴ <https://www.mountvernon.org/george-washington/farming/washingtons-crops/george-washington-grew-hemp/> (last visited 7/10/2021).

12. In 1937, Congress passed the Marihuana Tax Act, in no small part because of the fearmongering of Harry Anslinger, who took the scientifically unsupported idea of marijuana as a violence-inducing drug, connected it to black and Hispanic people, and created a perfect package of terror – fueled on racism -- to sell to the American media and public.⁵
13. Starting in 2014, however, with the 2014 Farm Bill, federal policy began to distinguish between hemp and industrial hemp, derived from the *Cannabis sativa L* plant, and its cousin, marijuana, the *Cannabis indica plant*.
14. In 2018, Congress again, in the 2018 Farm Bill, passed measures intending to legalize the former, while continuing to criminalize the later, creating a definition for hemp:
- (1) Hemp. The term “hemp” means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- 7 U.S.C. 1639o
15. Congress also amended the Controlled Substances Act, to account for this definition, and clear legalization, of industrial hemp. Controlled Substances Act. 21 USCS § 802(16)(B). That provision states:
- “(B) The term ‘marihuana’ does not include—
- (i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946 [7 USCS § 1639o]; or
- (ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.”

⁵ <https://www.businessinsider.com/racist-origins-marijuana-prohibition-legalization-2018-2> (last visited 7/10/2021).

16. In turn, the Drug Enforcement Agency amended Schedule I to accommodate this definition, which now states:

Tetrahydrocannabinols, DEA reference 7370, Schedule I provides at 21 CFR 1308.11(31)(ii) that: “(ii) Tetrahydrocannabinols does not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639o.”

17. The Kentucky General Assembly has also undertaken significant revisions to Kentucky law to accommodate industrial hemp and products derived from it.

18. First, Kentucky’s General Assembly enacted its policy concerning hemp in KRS 260.852:

It is the declared policy of the Commonwealth that hemp is a viable agricultural crop in the Commonwealth. The purposes of KRS 260.850 to 260.869 are to:

- (1) Promote the research and study methods of cultivating, processing, and marketing hemp;
- (2) **Promote the expansion of the Commonwealth’s hemp industry to the maximum extent permitted by federal law** by allowing citizens of the Commonwealth to cultivate, handle, or process hemp and hemp products for commercial purposes; and
- (3) Move the Commonwealth and its citizens to the forefront of the hemp industry. (emphasis added).

19. Further, the General Assembly enacted KRS 260.850, which contains the following definitions:⁶

- (5) “Hemp” or “industrial hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis;

⁶ This section also defines “Commissioner” to be the Commissioner of the Kentucky Department of Agriculture, and “Processing” as converting an agricultural commodity into a marketable form.

(6) “Hemp products” or “industrial hemp products” means products derived from, or made by, processing hemp plants or plant parts;

20. Further, KRS 260.858 provides the statutory scheme for products made from industrial hemp in the Commonwealth. It provides:

(1) Notwithstanding any other provision of law to the contrary, it is lawful for a licensee, or his or her agent, to cultivate, handle, or process hemp or hemp products in the Commonwealth.

(2) It is unlawful for a person who does not hold a license issued by the department, or who is not an agent of a licensee, to cultivate, handle, process, or market living hemp plants or viable seeds, leaf materials, or floral materials derived from hemp. Penalties for persons who cultivate, handle, process, or market living hemp plants or viable seeds, leaf materials, or floral materials derived from hemp without a license are the same as those penalties that are applicable to persons who violate KRS Chapter 218A, relating to marijuana.

(3) It is unlawful for a person who does not hold a license issued by the department, or who is not an agent of a licensee, to possess hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%). Penalties for persons who possess such hemp extract materials without a license are the same as those penalties that are applicable to persons who violate KRS Chapter 218A, relating to marijuana.

21. Applying the plain meaning of this provision KRS 260.858, (a) licensees may cultivate and process hemp and hemp products in the Commonwealth; (b) non-licensees may possess hemp extract material having a delta-9 tetrahydrocannabinol concentration at or below three-tenths of one percent (0.3%).⁷

22. KRS 260.8635 further contains a prohibition (with an exception) on moving or transporting “any hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%).”

⁷ This, in part, is because and through the application of the interpretive doctrine “*expressio unius est exclusio alterius*,” which means that the mention of one thing implies the exclusion of another. *Fox v. Grayson*, 317 S.W.3d 1, 8-9 (Ky. 2010). The express prohibition on non-licensees having hemp extract material products that contain greater than three-tenths of one percent (0.3%), implies that any products having less than this concentration are legal.

23. Pursuant to KRS 260.862, the Department of Agriculture “shall have the authority and power to **promulgate administrative regulations** to: ... (c) Prescribe sampling and testing procedures to ensure that hemp and hemp products cultivated, handled, processed, or marketed under the authority of this section do not exceed the concentration levels defined in federal law as it currently exists or as it may be subsequently amended; (d) Define classes or categories of hemp products that are eligible for sale, transfer, or distribution to members of the public; ...” (emphasis added).

24. Pursuant to KRS 250.355:

(1) The director,⁸ or the director’s designee, shall receive samples and test hemp plants, plant parts, and materials grown or located within the Commonwealth in order to determine whether the hemp plants, plant parts, and materials are in compliance with the provisions of KRS 260.850 to 260.869 and the administrative regulations promulgated thereunder.

(2) The director, or the director’s designee, shall perform testing services as the primary laboratory for delta-9 tetrahydrocannabinol as required by the department. The department may contract with other qualified laboratories to perform delta-9 tetrahydrocannabinol testing services when required.

25. Kentucky’s Controlled Substances Act also contains definitions that are relevant.

Specifically, the Act defines “Marijuana” as “all parts of the plant Cannabis sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances. The term ‘marijuana’ does not include: (a) Industrial hemp that is in the possession, custody, or control of a person who holds a license issued by the Department of Agriculture permitting that person to cultivate, handle, or process industrial hemp; (b)

⁸ Pursuant to KRS 250.010, “(4) “Director” means the director of the Agricultural Experiment Station or his designee.”

Industrial hemp products that do not include any living plants, viable seeds, leaf materials, or floral materials; ... (e) A cannabidiol product derived from industrial hemp, as defined in KRS 260.850.” KRS 218A.010(28).

26. Finally, Kentucky has legalized cannabidiols as a substance for human consumption, which requires certain testing based on the “amount of delta-9 tetrahydrocannabinol.” KRS 217.039.

Production of Delta-8 Products

27. The production of Delta 8 products begins with the growing of industrial hemp, which is itself compliant – that is to say that the hemp plant itself has “a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.”
28. For growers, this means starting with the Cannabis sativa L. plant, and, based on Kentucky Department of Agriculture regulations, ensuring that the plant is harvested at a time when its concentration of delta-9 tetrahydrocannabinol concentration is not more than three-tenths of one percent (0.3%) on a dry weight basis. For purposes of this Complaint, we have denoted “Compliant Hemp” as the Cannabis sativa L. plant, which have a delta-9 tetrahydrocannabinol concentration is not more than three-tenths of one percent (0.3%) on a dry weight basis. As an aside, delta-8 tetrahydrocannabinol is found naturally in the Cannabis sativa L. plant.
29. The Complaint Hemp plants are usually harvested around October. Before they can officially harvest, a sample of each crop is tested and cleared by the Kentucky Department of Agriculture. This is to assure that the farm is following federal

regulations, keeping their hemp at not more than three-tenths of one percent (0.3%) on a dry weight basis.

30. As an aside, if the plant exceeds these delta-9 concentration limits, it is permitted to be retested, but, if it is still not in compliant with the delta-9 concentration limit, it is destroyed.
31. Once harvested, the Complaint Hemp plants are put up to be cured, or air dry in a well-ventilated area. This curing process takes 3-4 weeks. Once dried, the flowers, which contain the strongest concentration of cannabinoids, are stripped from the plants and then shipped to manufacturers that then extract the cannabinoids.
32. Extraction is the process of removing the CBD extract from the Complaint Hemp plant to turn it into a usable form. Each extraction method results in a slightly different end result, but depending on how it's extracted, the raw extract will have a thick oily texture with a very dark, almost black, hue.
33. There are different extraction methods and each, from the producers' point of view, has its own pros and cons. Most common extraction methods include:
- a. Ethanol Extraction: This method involves soaking the plant in high-grain alcohol in order to extract the cannabinoids. Ethanol extraction is now one of the most common methods of today's high-quality natural extractions and is gaining traction as one of the most effective on the market. Sometimes this ethanol extraction will be followed up by fractionalized distillation.
 - b. CO2 Extraction: CO2 extraction uses carbon dioxide to isolate cannabinoids under extremely low temperatures. Super-cooled and condensed carbon dioxide cools and

then extracts CBD oil without leaving any chemicals or residue behind. This process requires robust equipment, but yields a safe end product.

- c. Oil Extraction: Another method is the oil method, which is popular with at home or on farm producers. In this method, the hemp plant is heated and cooked in a carrier oil such as olive oil which extracts the desired cannabinoids.

34. CBD products are tested for compliance, and producers test the products to ensure they have a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.

35. There is no dispute between the parties, at least insofar as the process is concerned for paragraphs 27 through 34 for the production of CBD, that such products are legal.

36. CBD products are then converted through isomerization to Delta-8 products.

37. This is accomplished through the application of a non-polar organic solvent. Common solvents include alkanes like heptane.

38. Acids are then added into the solvent solution, and the mixture is maintained at a temperature of 100 degrees Celsius while continually stirring for upwards of 18 hours. Popular solvents for that process include alumina acid-washed, p-toluenesulfonic acid, and hydrochloric acid (all known as Lewis acids).

39. Once the chemical reaction is complete, and the upper phase is separated, and the solution is then washed and neutralized. This is accomplished by adding a base solution (e.g. an aqueous 5% NaHCO₃ (sodium bicarbonate)).

40. At that point, a Delta-8 extract is present; for purposes of this Complaint and lawsuit, that extract, and the products derived from it, all have a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.

41. From the Delta-8 extract, various Delta-8 Products are derived or manufactured, all with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.
42. To be clear, these Delta-8 Products are “derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers” from “the plant Cannabis sativa L. and any part of that plant,” and have “a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.” 7 U.S.C. 1639o; KRS 260.850.
43. Delta-8 Products are contained in topical applications, including oils, and other applications.

Defendants’ Activities that give rise to this suit

44. On April 19, 2021, the General Counsel from the Kentucky Department of Agriculture (“KDA”) authored certain Guidance concerning products that contain delta-8 tetrahydrocannabinol (“Delta-8”), not as a regulation, but merely as a policy statement (collectively the “April Guidance”).
45. A true and accurate copy of the April Guidance is attached as **Exhibit A**.
46. The April Guidance was just that – a guidance document – and was not issued as an administrative regulation, was not filed with the Legislative Research Commission, was not placed out to the public for public comment, and no public hearings were held concerning it.
47. In short, none of the steps required by KRS Chapter 13A were followed concerning the April Guidance’s issuance if it were to be considered an administrative regulation.
48. In the last 60 days, members of the Kentucky State Police, acting upon April Guidance (in at least one instance, a search warrant was issued based upon this April Guidance),

and a gross misapplication of Kentucky law, have undertaken various raids against gas station and other owners that sell Delta-8 Products.

COUNT I – DECLARATORY AND INJUNCTIVE RELIEF

49. Plaintiffs reincorporate the foregoing paragraphs as if fully written herein.
50. Plaintiffs seek a declaration of rights that: (1) all products derived from Complaint Hemp, which are within the definitions contained in 7 U.S.C. 1639o and KRS 260.850(5) (products that are contained from “any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis”); and (2) which are themselves compliant (the products themselves contain “a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis”), are legal and lawful.
51. Plaintiffs further seek a declaration of rights that the April Guidance is not lawful and is void and unenforceable, in that it constitutes an “Administrative Regulation” within the meaning and import of both KRS 13A.010(2) and KRS 13A.100(1), because it is a “statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body,” it must have been issued as a administrative regulation pursuant to KRS 13A.100(1), and, issued as guidance, it violates these sections as well as KRS 13A.120, 13A.130, and KRS 13A.170.
52. Plaintiffs further seek a declaration of rights that the April Guidance and the enforcement of it, is not lawful and is void and unenforceable, and is in contravention of Sections 27

and 28 of the Kentucky Constitution, because it is in contravention of duly delegated powers and is contrary to legislatively enacted law.

53. Plaintiffs further seek permanent injunctive relief against the Defendants to enjoin any enforcement activities against such legal and lawful products.

WHEREFORE, Plaintiff demands:

- Declaratory relief, that the April Guidance is invalid, under KRS 13A, KY Const. §§ 27 and 28, and contrary to Kentucky and federal law; and
- Declaratory relief, that: (1) all products derived from Complaint Hemp, which are within the definitions contained in 7 U.S.C. 1639o and KRS 260.850(5) (products that are contained from “any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis”); and (2) which are themselves compliant (the products themselves contain “a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis”), are legal and lawful;
- An injunction enjoining Defendants, and those acting in concert with them, from taking any enforcement actions against such products in the above paragraph, or to enforce the provisions in the April Guidance;
- That Plaintiffs be awarded their reasonable costs and attorney fees; and
- Such other relief as this Court may find just and proper.

Respectfully submitted,

/s/Christopher Wiest
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Co-Counsel for the Plaintiffs

VERIFICATION

COMMONWEALTH OF KENTUCKY

COUNTY OF Christian

Jss

The undersigned, as a duly qualified and authorized officer of the Kentucky Hemp Association, states that he/she has read the foregoing Verified Complaint for Declaratory and Injunctive Relief, on behalf of the Kentucky Hemp Association, and that the facts set forth therein are true to the best of her knowledge, information and belief and based on personal knowledge.



SUBSCRIBED AND SWORN to before me, a Notary Public, by Katie Moyer on
behalf of the Kentucky Hemp Association, this 2 day of July, 2021.



NOTARY PUBLIC KYNP26416

4-21-2025
My Commission Expires:

Ryan F. Quarles
Commissioner



Kentucky Department of Agriculture

Office of the Commissioner
105 Corporate Drive
Frankfort, KY 40601
Phone: (502) 782-9259

April 19, 2021

Dear Kentucky Hemp License Holder:

In recent weeks the Kentucky Department of Agriculture (KDA) received inquiries from members of the public, including licensees within KDA's Hemp Licensing Program, about the legal status of products containing Delta-8 THC under federal law and state law. In response to these inquiries, I am writing this letter to advise you that Delta-8 THC is a Schedule I controlled substance under federal law and Kentucky law; that distributing products containing this substance is illegal; and distributing such products could lead to your expulsion from the Hemp Licensing Program as well as potential exposure to criminal prosecution.

Let's begin with federal law. As you know, in 2018 Congress created a narrow exemption from the Controlled Substances Act's definition of "marijuana" (DEA numbers 7350 and 7360) for hemp that contains not more than 0.3% total Delta-9 THC. Cannabis with total Delta-9 THC in excess of that threshold remains a Schedule I substance.

There is no equivalent exemption for Delta-8 THC. That being the case, the manufacture and marketing of products containing Delta-8 THC, in any quantity or concentration level, remains prohibited by federal law.

And indeed, the federal Drug Enforcement Administration's [Controlled Substances List](#) states that Delta-8 THC and other forms of THC are Schedule I controlled substances. (They are identified with DEA Number 7370.) You can find this specific Schedule I listing on Page 17.

That brings us to state law. Because Delta-8 THC is a Schedule I controlled substance under federal law, it remains a Schedule I controlled substance under state law as well. See 902 KAR 55:015, Section 1(1) (stating that each substance that is scheduled or designated as a Schedule I controlled substance under federal law "shall be scheduled or designated at the state level as a Schedule I controlled substance").

To date, the Kentucky General Assembly has not enacted any law to create an exemption from the Kentucky Controlled Substances Act, KRS Chapter 218A, for products containing Delta-8 THC. Of course, the General Assembly could choose to create such an exemption in the future, as it did in recent years by revising the definition of "marijuana" to create exemptions for four specific categories of products containing cannabidiol (CBD). See KRS 218A.010(28)(c-f).

Because there are no such exemptions for Delta-8 THC in the Kentucky Controlled Substances Act, those substances remain prohibited by state law. For that reason, you should not manufacture, market, or distribute products containing Delta-8 THC. Failure to heed this guidance could result in the revocation of your hemp license and expose you to the risks of prosecution by federal, state, and local law enforcement agencies.

Please do not hesitate to contact me with any questions or concerns you may have about this letter.

Thank you for everything you do to make KDA's Hemp Licensing Program the best in the nation.

Respectfully,

/s/

Joe Bilby
General Counsel