



Legal and Practical Issues in the Evolving World of Cannabis Regulation

Managing Biomass and Biowaste from the Hemp and Cannabis Industries

09 December 2020



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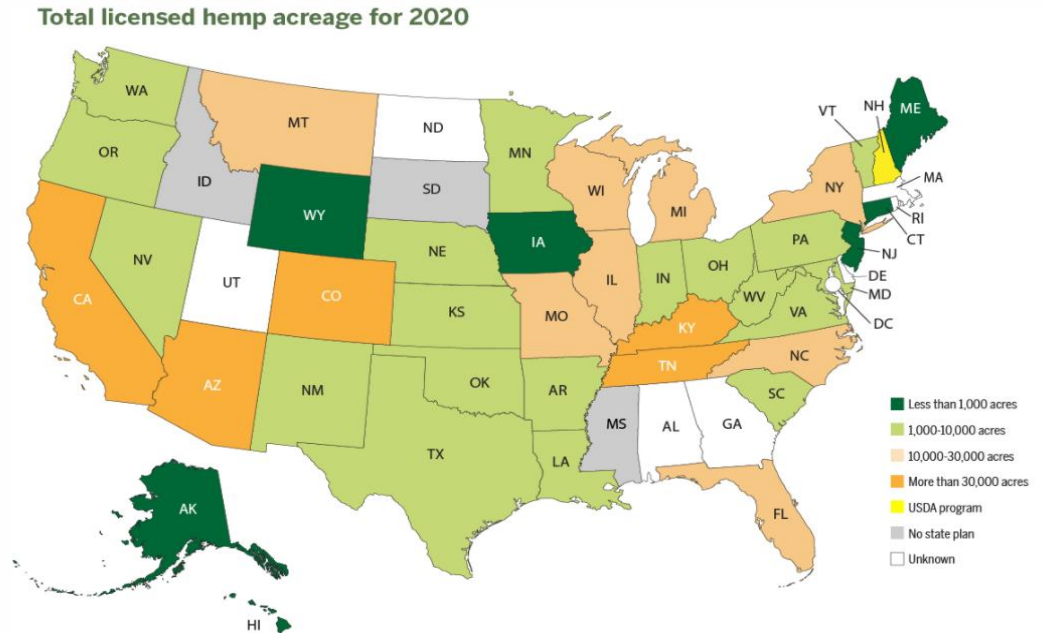
**WHAT IS BIOMASS AND BIO
“WASTE”?**

Cannabis Biomass and “waste”

- [Poll Audience] What do you think of when you hear bio “waste”
 - A. Traditional Hazmat? i.e. hazardous at any level?
 - B. Materials that are hazardous or toxic in exceptionally large doses?
 - C. Waste composed of organic matter? **
- Right Answer **

Where there is hemp production, there will be waste...

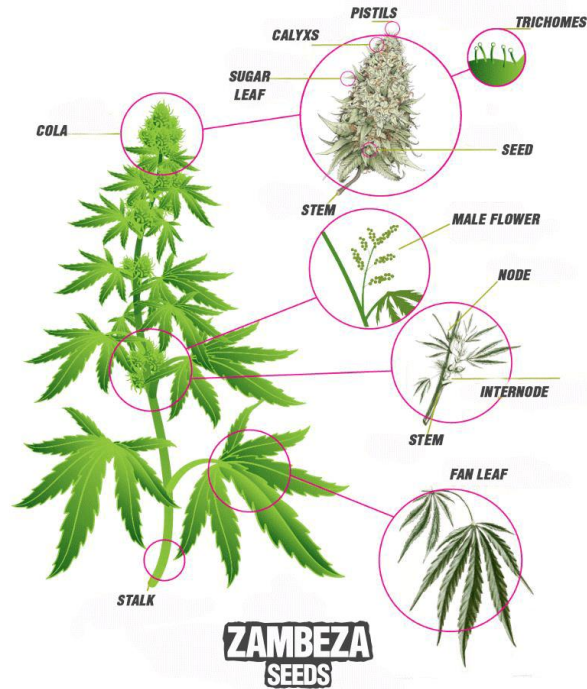
- Licensed acreage for 2020 hemp production ~466,000 acres
- Rough estimates predict anywhere from 2-5 tons of stalk waste per acre of harvested hemp
- Potential for 1 million – 2.3 million tons of waste annually
 - This number will increase as hemp production grows



So Why Are We Talking About This?

- Regulation
 - Patchwork of state and federal regulations
- Disposal Options
- Litigation Risk
- Sustainability and carbon footprints
 - Old practices combined with “new” tech leading to interesting industry advancement

Waste Composed of Organic Matter



What to Know Before You Dispose

STATE AND FEDERAL REGULATIONS

Which side is hemp and which is marijuana?



Cannabis-hemp vs. Cannabis-marijuana

- A) Left side is hemp; right side is marijuana
- B) Left side is marijuana; right side is hemp
- C) Both sides are marijuana
- D) Both sides are hemp
- E) It's not possible to tell visually

Hemp or Marijuana?

Type	Cannabis?	Chemical Makeup	Psychoactive Properties?	Cultivation	Applications
Hemp	Yes	Low THC (less than 0.3%)	No	Grown as an agricultural crop	Automobiles, Body care, Clothing, Construction, Food, Plastic, others
Marijuana	Yes	High THC (5%-25%)	Yes	Grown as an agricultural crop	Medicinal and recreational use

Hemp

- The 2018 Farm Bill requires state and tribal hemp production plans to include procedures for disposal of non-compliant plants and products
 - Disposal procedures must conform to controlled substances regulations by DEA (21 C.F.R. Chapter 2, Pt. 1317).
 - Some exemptions for cannabis plant material and products made from cannabis containing THC (21 C.F.R. Chapter 2, Pt. 1308.35).
 - All disposal must be documented and USDA must be notified
- Other production by-products may be covered under EPA's Hazardous Waste Regulations (40 C.F.R. Part 261.3).

USDA-approved Production Plans

- As of October 2020, USDA has approved 65 State, Tribal Government, and Territorial Hemp Production Plans
- Hemp Production Plans for Non-Federal Governments must include, *inter alia*:
 - Procedures for "accurate and effective sampling testing using post decarboxylation or similar reliable methods"
 - Procedures for disposing of plants that do not meet the THC content requirements of the USDA regulations

USDA-approved Disposal Methods

- USDA provides guidance on the AMS website regarding acceptable means of disposing of non-compliant hemp:
- <https://www.ams.usda.gov/rules-regulations/hemp/disposal-activities>
- Acceptable methods include: plowing under; mulching/composting; disking; chopping; deep burial; and burning.

“Hot” Hemp Burned On-Site



Photo from USA Today

State Regulation of Cannabis Disposal

- Disposal requirements vary widely by Government entity
- In States where medicinal or recreational use of Cannabis-marijuana is no longer criminal, there are differing requirements for disposal of Cannabis-m vs. Cannabis-h solid waste
- Best advice is to seek counsel who is knowledgeable and experienced in the regulations of a particular governmental entity

State Regulation of Cannabis Disposal

- For example:
 - California
 - State hemp plan under review
 - Recreational marijuana is legal
 - Three state agencies oversee cannabis-m and cannabis-h disposal
 - Bureau of Cannabis Control (Bureau)
 - CalCannabis Cultivation Licensing (CalCannabis)
 - Manufactured Cannabis Safety Branch (MCSB)
 - Colorado
 - No state hemp plan – operating under 2014 USDA Pilot Program
 - Recreational marijuana is legal
 - CO Department of Public Health and Environment governs marijuana disposal
 - CO Department of Agriculture governs hemp

When you run afoul of the regulations (or even if you don't)

LITIGATION RISK

Litigation Risk

- Highly Regulated Industry
- Uncertainty
 - Individual Impacts
 - Environmental Impacts
 - Ancillary regulations and industries
- Other Industries to Serve as Models

Disposal Options

- Landfill
- Compost
- In-Vessel Digestion
- Incineration

Litigation Risks – Types of Claims

- Product Liability
- Negligence
- Breach of Contract
- Nuisance
- RCRA (Resource Conservation and Recovery Act)
- CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act)
- Civil RICO (Racketeer Influenced and Corrupt Organizations)
- State Environmental Infractions
 - Safe Drinking Water and Toxic Enforcement (Prop 65)
 - California Environmental Quality Act (CEQA)

Litigation Risk – Best Practices to Avoid Liability

- Compliance (Officer?)
 - State and Federal
 - OSHA
- Protocols and Training
- Document, Document, Document
- Enlisting Third Parties
 - Compliance
 - Disposal

Best Practices to Avoid Liability and Litigation Risk

PARTNERING WITH THIRD PARTIES

Picking Partners – Indemnity Agreements

“Ultimately, generators are responsible and liable for their hazardous waste from the cradle to the grave, regardless the actions provided by their contracted service provider. If hazardous waste has been improperly documented or disposed of, it falls back on the generator.”

- Jonathan Lee, *5 Steps to Compliant Waste Management*, MG Magazine (September 11, 2020)

Picking Partners

- Referrals
- Expertise in applicable regulations
 - Ask questions
 - Price Point
- Prior violations, warning letters, lawsuits
- Innovators

Picking Partners – Indemnity Agreements

“[Vendor] shall be responsible for any violation of federal, state or local laws with respect to the disposal of [Vendee’s] waste by Vendor, Vendor’s employees or third party vendors and Vendor agrees to indemnify [Vendee] and its subsidiaries for all claims, actions, suits, proceedings, investigations, demands, fines, liabilities, judgments, settlements, damages, losses, costs, and expenses, including reasonable attorney’s fees arising from the disposal of [Vendee] waste to the extent that such claims, actions, suits, proceedings, investigations, demands, fines, liabilities, judgments, settlements, damages, losses, costs, and expenses arise solely from the actions Vendor or Vendor’s employees. In the event of a conflict between this Section and Section 10, this Section shall control.”

Picking Partners – Indemnity Agreements

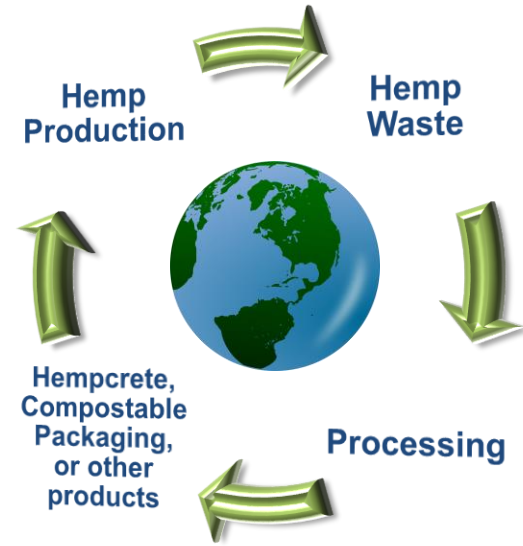
- You are responsible for any alleged “errors” you made
- They are responsible for any alleged “errors” they made
- Figuring out who is responsible for an alleged “error” is expensive

Sustainability Emphasis

CIRCULAR ECONOMIES

Encouraging a Circular Economy

- Through innovative recycling, repurposing, and composting, a more sustainable industry is possible.
 - Promoting, and even legislating, the development of circular economies and/or extended producer responsibility as a means to deal with product waste is a growing trend for many products, not just hemp



What (Else) to Worry About

ANCILLARY WASTE CONSIDERATIONS

Additional Waste Sources to Consider

- Cannabis products
 - packaging
 - vape cartridges
 - batteries
- Potential for additional wastes
 - Pesticides
 - Nutrients
 - Universal waste lamps (indoor cultivation)



Questions

