

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.39.310 pertaining to a waste)
management process revision)

TO: All Concerned Persons

1. On August 5, 2022, the Department of Revenue published MAR Notice No. 42-1060 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1648 of the 2022 Montana Administrative Register, Issue Number 15.

2. On August 26, 2022, the department held a public hearing to consider the proposed amendment. The attendees at the hearing were Pepper Peterson, President and Chief Executive Officer of the Montana Cannabis Guild (Guild), and Chris Beuthien with Sweetgrass Consulting. The department also received written comments from Kaari Fulton, Armadillo Buds, Bill Metzler, and Michael Block, Director of Public Policy, LeafLink.

3. The department has amended ARM 42.39.310 as proposed but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.39.310 WASTE MANAGEMENT (1) through (9) remain as proposed.

(10) After the expiration of the 72-hour period in (9), a licensee may dispose of marijuana stalks and stems waste other than usable marijuana as defined in 16-12-102, MCA, without rendering ~~them~~ it unusable pursuant to (3) by releasing them to a third-party contractor to render them unusable. A licensee must provide the department with a copy of the waste removal agreement with the third-party contractor before commencing services and must maintain the contract in the binder of documents required by ARM 42.39.105(6). The third-party contractor may process marijuana stalks and stems into non-marijuana products or otherwise render the marijuana stalks and stems unusable.

AUTH: 16-12-112, MCA

IMP: 16-12-103, 16-12-105, 16-12-112, 16-12-203, 16-12-210, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Petersen provided general commentary in support of the rulemaking. He also commented that part of the Guild's mission statement is creating sustainable industry. Mr. Petersen requested the department clarify that animal usage (i.e., farm animals) of stalks and stems for animal bedding in an

agricultural setting or for other agricultural purposes could be documented. This would be an allowable self-destruction of product.

Mr. Peterson also requested that sustainability not be limited to third-party contractors and the department allow producers themselves to direct their sustainable waste management, recognizing the entrepreneurial possibilities and not limiting them.

Mr. Petersen also commented that waste removal should not negatively impact Montana's hemp industry and opined that the omission of stems from statutory consideration involving waste may be drawn back to hemp farmers.

Mr. Beuthien expressed his support for, and concurred in, Mr. Peterson's comments.

RESPONSE 1: The department thanks Mr. Petersen, the Guild, and Mr. Beuthien for their support and involvement in this rulemaking. The department agrees that the expansion of waste management protocols towards improved sustainability for the industry is a good topic as a part of the department's rulemaking goals under 16-12-112(1)(o), MCA. Reluctantly, the department cannot accommodate these additional amendment requests because they exceed the somewhat limited scope of this rulemaking - in that they involve rule sections not subject to any proposed amendment - and would not be subject to the public review and comment requirements of the administrative procedure act.

COMMENT 2: Mr. Beuthien also commented that the department has not taken advantage of composting and other, more advanced post-production use of marijuana waste. Mr. Beuthien also noted that Montana's urban producers do not have the ability to remove marijuana waste in the same manner as their rural counterparts, and he requests thought be put into expanding allowable waste protocols based on the challenges of urban producers.

RESPONSE 2: The department thanks Mr. Beuthien for his valuable input and suggestions to this rulemaking and refers him to Response No. 1.

COMMENT 3: Mr. Metzler, in addition to his overall support of this rulemaking, provided substantial written commentary regarding the apparent new industry (to Montana) of marijuana refuse/biomass waste conversion. From Mr. Metzler's correspondence, the industry provides the processing of organic plant matter and other biomass waste material into valuable products for the cosmetic, textile, farming, and energy sectors. The biomass process also involves equipment specific to terpene harvesting which can be put to work with the cannabis waste material locally in Montana. Mr. Metzler further commented that marijuana stalks, stems, and leafy material can all be utilized to process marijuana waste into non-marijuana products.

RESPONSE 3: The department appreciates Mr. Metzler's comments, his support for this rulemaking and the direction of the department's Cannabis Control Division, and his advocacy for the development of marijuana refuse/biomass waste conversion. Notwithstanding Mr. Metzler's obvious technical knowledge about the

subject matter, much of his written comments are beyond the scope of this rulemaking and are best-directed at the Governor and the Montana Legislature for public policy and statutory changes to Montana's regulation of the cannabis industry. In response to Mr. Metzler's comments about the ability to take and use "leafy material," the department has amended (10), upon adoption, to clarify that only the parts of the marijuana plant that the legislature has defined as "unusable" may be taken by third parties for further processing.

COMMENT 4: Ms. Fulton commented her understanding of the rule amendments to require that dispensaries contract out a third party to verify whether a marijuana plant "has died." She also provided commentary about her struggles as a medical-only dispensary operator and challenges with packaging and labeling requirements for marijuana products.

RESPONSE 4: The department directs Ms. Fulton to the department's statement of reasonable necessity in the original proposal notice which explains the proposed amendment (i.e., to allow a marijuana licensee to dispose of marijuana stalks and stems in a more sustainable manner). As for Ms. Fulton's other comments, they are expressions of opinion outside the scope of this rulemaking, and the department believes it cannot provide a constructive response.

COMMENT 5: Mr. Block provided commentary that LeafLink is a cannabis technology company that manages product orders across its business-to-business platform across 25+ states and territories. While LeafLink is not a licensed marijuana business in Montana, it works with licensees in several states and values the opportunity to weigh in on proposed rules that will assist them and consumers.

LeafLink strongly supports the department's decision to improve waste management within the marijuana industry. The changes that allow for third-party contractors to dispose of stalks and stems will help businesses, environmental conditions, public safety, and even consumers. LeafLink contends that third-party contractors are often better suited to handle the disposal of marijuana waste safely and efficiently. And the more Montana allows specialized businesses and contractors to licensees in the way they support businesses in every other industry, the more efficient and safer the market will be.

RESPONSE 5: The department thanks Mr. Block for the comments and LeafLink's support of this rulemaking.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart for
Brendan Beatty
Director of Revenue

Certified to the Secretary of State September 13, 2022.