Articles + Publications | May 23, 2025

A Path Forward for Colo. Pot Products After Failed Safety Test

WRITTEN BY

Cole White | Jean E. Smith-Gonnell

In the rapidly evolving landscape of Colorado's cannabis industry, maintaining compliance with state regulation is not just a legal obligation but a critical component of business strategy. As cannabis products undergo rigorous testing, the potential of product contamination looms large, posing significant challenges for licensees.

The stakes are high: Failed test results can lead to costly destruction of products, affecting a licensee's bottom line and market reputation. However, Colorado's regulatory framework offers pathways beyond destruction that can salvage value while maintaining consumer safety. Despite the daily challenges and financial implications of product contamination, some licensees remain unaware of these alternative pathways.

Navigating these alternatives requires a nuanced understanding of the legal and procedural intricacies involved. This article delves into the specifics of decontamination and remediation procedures for cannabis products in Colorado, providing a comprehensive overview for legal and business professionals in the cannabis sector.

From understanding the types of contaminants that can be addressed to mastering post-treatment testing protocols, this article aims to equip you with the knowledge necessary to make informed decisions that align with both regulatory requirements and business objectives.

Decontamination and Remediation

When faced with failed test results, Colorado licensees have three options: They must either destroy, decontaminate or remediate the product.[1] Destruction is straightforward — the licensee must destroy the product and document the destruction in accordance with waste disposal rules.[2]

While this may be one of the simplest options for dealing with contaminated product, it is often the most costly, as it not only involves writing off the full value of the product, but also handling the expenses and procedures related to destruction.

As an alternative to destruction, in certain circumstances, licensees are given the opportunity to decontaminate and/or remediate certain products. As defined by state regulations, both decontamination and remediation describe the process of removing or neutralizing dangerous substances from the product.

Decontamination procedures do so without changing the product's type, while remediation results in a change in product type.[3] So, for example, after a harvest batch of cannabis flower has been decontaminated, the cannabis remains in the form of flower rather than changing into a different product category, such as a regulated marijuana concentrate or marijuana product, as would be the case through remediation.

Remediation measures mirror typical procedures for processing cannabis batches into other product types. Alternatively, licensees are limited to the following approved types of decontamination and microbial control methods: ozone treatment, X-ray irradiation, ultraviolet light irradiation, microwave irradiation, vaporized hydrogen peroxide treatment, pasteurization and radio frequency treatment.[4]

The rules contain specific requirements for each method, along with additional safety and documentation requirements.[5] Licensees may submit requests to the division to consider additional decontamination or microbial control step methods, which must include the necessary scientific data and evidence of efficacy, along with training requirements, safety precautions and manufacturer recommendations.[6]

Quarantine

Before decontamination or remediation procedures can begin, state law requires that, when a product or batch's test results suggest the presence of a "substance determined to be injurious to health," the licensee must immediately notify the Marijuana Enforcement Division of the failed test results and quarantine the product.[7]

In addition, the MED may require a licensee to quarantine a particular product or batch where the division has reasonable grounds to believe that the particular batch or product is contaminated or presents a risk to public safety.[8]

A quarantine requires physical separation of the product or batch from all other inventory, and prohibits transfer of the product.[9] To implement the quarantine, the MED may restrict the licensee's ability to transfer the quarantined batch or product through the state's inventory tracking system, in addition to other methods authorized by law.[10]

Types of Products and Contaminants That May Be Decontaminated or Remediated

The products or batches that may be decontaminated or remediated under state law, and the circumstances justifying those actions, vary.

The types of contaminants and batches that may be decontaminated are limited to products or batches that have failed certain tests, such as:[11]

- Microbial testing for physical separation-based, heat/pressure-based and food-based retail or medical marijuana concentrates, vapor delivery devices, regulated marijuana product, regulated marijuana flower, wet whole plant, trim, prerolled marijuana and infused prerolled marijuana;

- Water activity testing; and

- Residual solvent testing for solvent-based marijuana concentrates.

For failed microbial testing of regulated marijuana flower, wet whole plant, trim, prerolled marijuana and infused prerolled marijuana, the product must also pass mycotoxin and water activity testing after final decontamination and prior to any transfer, but this testing is not required to occur until after the product has passed microbial testing.[12]

For failed water activity testing, the product must also pass a microbial contaminant test prior to any transfer, which is not required to occur until after the product has passed water activity testing.[13] Notably, wet whole plant is exempt from water activity testing.[14]

Alternatively, the types of contaminants and batches that may be remediated are limited to products or batches that have failed certain tests, such as:[15]

- Microbial testing for regulated marijuana flower, wet whole plant, trim, prerolled marijuana and infused prerolled marijuana, physical separation-based and heat/pressure-based retail and medical concentrate products, and vaporizer delivery devices;

- Water activity testing for regulated marijuana flower, wet whole plant, trim, prerolled marijuana, and infused prerolled marijuana; and

- Elemental impurities testing for regulated marijuana flower, wet whole plant, physical separation-based and heat/pressure-based regulated marijuana concentrates, and vaporizer delivery devices.

For products that fail microbial tests, marijuana flower, wet whole plant, trim, prerolled marijuana and infused prerolled marijuana must be retested for microbial, mycotoxin and water activity contaminants, while physical separation and heat/pressure based concentrates and vaporizer delivery devices must only be retested for microbial and mycotoxin contaminants.[16]

For products that fail water activity tests, the products must be retested for microbial, mycotoxin and water activity contaminants.[17]

Products that fail elemental impurities testing require special considerations. Assuming the batch is not deemed as hazardous waste under federal, state or local law or regulations, the product may be transferred for remediation.

The products manufacturer may remediate the product by processing it into a cannabis concentrate, but is prohibited from adding any other component to the product until it has passed all required contaminant testing. Importantly, all products undergoing remediation for elemental impurities must be tested, and these products are not eligible for a reduced testing allowance.[18]

Post-Treatment Testing Procedures

As discussed above, for all types of decontamination and remediation, after the procedures have been performed, the products must be retested. Licensees are required to create two new test batches of the product, each consisting of the requisite number of sample increments, as required by the rules.[19]

For decontaminated products, and remediated products subject to elemental impurities testing, licensees are required to either submit both new batches to the same testing facility that reported the original failed test, or submit the new batches to two other, separate testing facilities.[20] Assuming both test batches pass the required retesting, the product may then be either transferred, or further processed into a product or concentrate.[21]

If a decontaminated product fails one or both retests, the product must either be remediated or destroyed in accordance with the rules. Similarly, a remediated product that fails retesting must either be decontaminated or destroyed.[22] However, remediated products that fail elemental impurities retesting may not be decontaminated, and must be destroyed.[23]

Responsibility for Treatment and Testing Procedures

Whether a licensee is seeking to decontaminate or remediate product, they may choose to either handle the procedures themselves, or they may transfer the product to another licensed facility, depending on the chosen method.

For decontamination, licensees may transfer contaminated product to another licensed products manufacturer, cultivation facility — except for failed solvent-based concentrates, heat/pressure-based concentrates, and regulated marijuana product — or an accelerator manufacturer.[24] For remediation, licensees may only transfer contaminated product to another licensed products manufacturer.[25]

When a licensee does employ a third party for decontamination or remediation, who bears the responsibility and costs of retesting after the product is decontaminated or remediated depends on the next destination of the product. When the decontaminated or remediated product is being transferred from the decontaminating/remediating entity back to the original licensee, then the original licensee is responsible for all required testing.

Alternatively, where the decontaminating/remediating entity will transfer the product on to a different licensee or further process the product, the decontaminating/remediating entity is responsible for all testing.[26]

Conclusion

Understanding the nuances of decontamination and remediation procedures is vital for legal and business professionals involved in Colorado's cannabis industry. From the initial quarantine requirements to the specifically approved methods and critical post-treatment testing protocols, each step is designed to ensure product and consumer safety while providing licensees with an alternative to product destruction.

As the industry continues to evolve, staying informed on these procedures is not only essential for maintaining regulatory compliance but also for safeguarding public health and optimizing business operations.

By mastering these processes, licensees can navigate the complexities of the cannabis market with confidence, ensuring both the integrity of their products and the sustainability of their enterprises in Colorado's competitive landscape.

---

[1] C.R.S.A. § 44-10-203(2)(d)(III)(A); 1 CCR 212-3:4-240(C).

[2] See 1 CCR 212-3:3-230.

[3] 1 CCR 212-3:1-115.

[4] 1 CCR 212-3:3-320(B).

[5] 1 CCR 212-3:3-320(B-D).

[6] 1 CCR 212-3:3-320(E).

[7] C.R.S.A. § 44-10-203(2)(d)(III)(A); 1 CCR 212-3:4-240(A)(2).

[8] 1 CCR 212-3:4-240(A)(1).

[9] 1 CCR 212-3:4-240(A)(3).

[10] 1 CCR 212-3:4-240(A)(4).

[11] 1 CCR 212-3:4-240(C)(2)(c).

[12] 1 CCR 212-3:4-240(C)(2)(c)(ii)(A).

[13] 1 CCR 212-3:4-240(C)(2)(c)(iii)(B).

[14] 1 CCR 212-3:4-240(C)(2)(c)(ii)(A); 1 CCR 212-3:4-240(C)(2)(c)(iii)(B); see also 1 CCR 212-3:4-245(B).

[15] 1 CCR 212-3:4-240(C)(3)(c).

[16] 1 CCR 212-3:4-240(C)(3)(c)(i-ii).

[17] 1 CCR 212-3:4-240(C)(3)(c)(iii).

[18] 1 CCR 212-3:4-240(C)(3)(c)(iv).

[19] 1 CCR 212-3:4-240(C)(2)(a); 1 CCR 212-3:4-240(C)(3)(a); 1 CCR 212-3:4-240(C)(3)(c)(iv)(F); see also 1 CCR 212-3:4-225.

[20] 1 CCR 212-3:4-240(C)(2)(a); 1 CCR 212-3:4-240(C)(3)(c)(iv)(G).

[21] 1 CCR 212-3:4-240(C)(2)(a)(i); 1 CCR 212-3:4-240(C)(3)(a)(i); 1 CCR 212-3:4-240(C)(3)(c)(iv)(H).

[22] 1 CCR 212-3:4-240(C)(2)(a)(ii); 1 CCR 212-3:4-240(C)(3)(a)(ii-iii).

[23] 1 CCR 212-3:4-240(C)(3)(c)(iv)(I).

[24] 1 CCR 212-3:4-240(C)(2).

[25] 1 CCR 212-3:4-240(C)(3).

[26] 1 CCR 212-3:4-240(C)(2)(d); 1 CCR 212-3:4-240(C)(3)(d).

Our Cannabis Practice provides advice on issues related to applicable federal and state law. Cannabis remains an illegal controlled substance under federal law.

RELATED INDUSTRIES + PRACTICES

- Cannabis