

# Notice of Violation

(3AAC 306.805)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date: 7/14/22

License #/Type: 10200 - Retail Marijuana Stores

Licensee: Kelsey Martinsen

Address: 225 South Front St., Wrangell, AK 99929

DBA: Happy Cannabis

AMCO Case #: AM221312

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

On 07/12/2022 AMCO Investigator Johnson performed a routine inspection of Happy Cannabis (retail #10200, standard cultivation 10201). During the inspection it was found employee Javier Gonzalez's, Marijuana Handler Permit #17753 had expired on 04/12/2021. Javier is employed by both the retail and the standard cultivation. Licensee was instructed Javier was to immediately cease working until he had reacquired a valid handler permit.

This is a violation of:

3 AAC 306.700. Marijuana handler permit

(a) Each agent of the marijuana establishment who sells, cultivates, manufactures, tests, or transports marijuana or a marijuana product, or who checks the identification of a consumer or visitor, and each licensee and employee must obtain a marijuana handler permit from the board before being licensed or beginning employment at a marijuana establishment.

(d) A licensee, employee, or agent of a marijuana establishment shall keep the marijuana handler permit card described in (c) of this section in that person's immediate possession or a valid copy on file on the premises at all times when on the licensed premises of the marijuana establishment.

**3 AAC 306.805 provides that upon receipt of a Notice of Violation, a licensee may request to appear before the board and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice of Violation. A licensee may respond, either orally or in writing to the Notice. 3 AAC 306.810 (2)(A)(B)(C) failed, within a reasonable time after receiving a notice of violation, to correct any defect that is the subject of the notice of violation of AS 17.8 or this chapter.**

**IT IS RECOMMENDED THAT YOU RESPOND IN WRITING TO DOCUMENT YOUR RESPONSE FOR THE MARIJUANA CONTROL BOARD.**

**\*Please send your response to the address below and include your marijuana license number in your response.**

Alcohol & Marijuana Control Office  
ATTN: Enforcement  
550 W. 7th Ave, Suite 1600  
Anchorage, Alaska 99501  
amco.enforcement@alaska.gov

Issuing Investigator: S. Johnson

Received by:

SIGNATURE:



SIGNATURE:

Delivered VIA: Mail

Date:

# Notice of Violation

(3AAC 306.805)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date: 7/14/22

License #/Type: 10201 Standard Marijuana Cultivation Facilities

Licensee: Kelsey Martinsen

Address: 225 South Front St., Wrangell, AK 99929

DBA: Happy Cannabis

AMCO Case #: AM221311

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

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Alcohol & Marijuana Control Office  
ATTN: Enforcement  
550 W. 7th Ave, Suite 1600  
Anchorage, Alaska 99501  
amco.enforcement@alaska.gov

Issuing Investigator: S. Johnson

Received by:

SIGNATURE:



SIGNATURE:

Delivered VIA: Mail

Date:

# Notice of Violation

(3AAC 306.805)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date: 7/5/22

License #/Type: 10284 Standard Marijuana Cultivation Facilities

Licensee: Will Schneider

Address: 5001 Eagle St. Suite B Anchorage, AK

DBA: Catalyst Cannabis Company

AMCO Case #: AM221280

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

On 6/22/22 AMCO Investigators and Metrc program managers conducted an audit at Catalyst Cannabis Company's cultivation facility. The licensee was notified of the visit on 6/10/22 and confirmed they looked forward to seeing us.

Upon arriving at the facility I saw that the main entry door was not fully closed or latched. I knocked on the door and received no response. I opened the unsecured door and announced my presence as I saw no one in the immediate area. A few moments later two employees appeared. They were later identified as David French, MHP# 16632 and Chadwick Stroh, MHP #13255.

Our audit revealed two untagged plants in the "Veg room" (roughly two feet tall) and two untagged plants in "Flower room A" (roughly three feet tall). French was not able to provide a reason why these plants were untagged. Inside the "clone room" there were 114 immature plants that were over 8 inches tall and untagged. French said he had been out with Covid and that is why the clones were not tagged.

These are violations of 3 AAC 306.430 (a)(b), 3 AAC 306.435 (a) and 3 AAC 306.710 (a)

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**\*Please send your response to the address below and include your marijuana license number in your response.**

Alcohol & Marijuana Control Office  
ATTN: Enforcement  
550 W. 7th Ave, Suite 1600  
Anchorage, Alaska 99501  
amco.enforcement@alaska.gov

Issuing Investigator: J. Bankowski

Received by:

SIGNATURE:



SIGNATURE:

Delivered VIA: / Email

Date:



**Birch Horton Bittner & Cherot**

*a professional corporation*

**Jason Brandeis**

Respond to Anchorage Office  
T 907.263.7243 • F 907.276.3680  
jbrandeis@bhb.com

July 22, 2022

**VIA ELECTRONIC DELIVERY**

Alcohol & Marijuana Control Office  
Attn: Enforcement  
550 W 7<sup>th</sup> Avenue, Suite 1600  
Anchorage, AK 99501  
amco.enforcement@alaska.gov

RE: Case #AM221280  
Our File No.: 507867.7

Dear AMCO Enforcement Staff:

Catalyst Cannabis Company ("Catalyst") hereby responds to the July 5, 2022 Notice of Violation issued for AMCO Case #AM221280.

At the outset, Catalyst notes that any violations present in this case were unintentional. Catalyst has been suffering from staffing shortages and personnel changes, and the facility's cultivation manager had missed time due to COVID. These events culminated in several errors and mistakes discovered by AMCO enforcement officers (which have since been corrected), and Catalyst is making efforts to cross-train its employees so that if a manager is again out for an extended period of time, another employee can fill in.

Catalyst's responses to specific allegations in the NOV are as follows:

**1. Unlocked Door**

The NOV notes that the "the main entry door was not fully closed or latched." Catalyst acknowledges that the door latch would occasionally "stick" and therefore sometimes would not close completely when shut in the normal course of operation. The door needed to be "slammed" shut to engage the latch when this happens. It is possible that a newer employee, who was not used to this process, may not have shut the door all the way, thus leaving it slightly ajar when AMCO enforcement officers arrived.

At the time of AMCO's visit, Catalyst employees were unaware that the door was unlatched, and therefore were not monitoring the front door when AMCO enforcement officers arrived. Catalyst recognizes this is a security issue, has repaired the door latch to remedy this problem, and has reminded all employees to make sure the main entry door is closed and fully latched after use.

## **2. Untagged Plants – Veg Room**

The NOV alleges that there were two untagged plants in the "Veg Room". Catalyst acknowledges this error. According to Catalyst employee David French (MHP #16632), the facility was in the process of destroying a number of plants. Tags were pulled from the plants that were to be wasted, so that Metrc records could be updated. At this time, other employees were instructed to remove and physically destroy and waste all of the plants that did not have a tag (because the tags had been removed, so as to indicate they should be destroyed). In this process, it appears that two plants were mistakenly left in the Veg Room and were not destroyed. Thus, there were two un-tagged plants in the Veg Room.

Catalyst has notified all employees of this error and instructed the employee entering destroyed plant information into Metrc to confirm that all plants scheduled for waste were removed and destroyed, and to regularly monitor plants to make sure no untagged plants are present on the premises.

## **3. Untagged Plants – Flower Room A**

The NOV alleges that there were two untagged plants in "Flower Room A." Catalyst acknowledges that there were errors with the plants in this room, but disagrees with the enforcement officer's conclusion that there were two untagged plants. According to Catalyst employee David French (MHP #16632), this room had one untagged plant and one plant that was misidentified with the wrong strain listed on the tag. French believes the tag may have fallen off or been misplaced while transplanting the plant to Flower Room A.

Catalyst has notified all employees of this error and instructed employees to regularly monitor plants to make sure that all plant tags are accurate and no untagged plants are present on the premises.

## **4. Untagged Plants – Clone Room**

The NOV alleges that "Inside the 'clone room' there were 114 immature plants that were over 8 inches tall and untagged." Catalyst disagrees with this assertion. Catalyst acknowledges that some immature plants in the Clone Room were over eight inches tall, but disputes the total number reported by AMCO.

According to Catalyst employee David French, most of the immature plants in this room were below the eight-inch dividing line that requires plants to be individually tagged. French states that some of the plants had hit a recent growth spurt and exceeded the eight-inch mark. But due to French's COVID illness and other staff shortages, Catalyst employees may not have been able to keep up with this aspect of its operation. Plant growth is a dynamic, and often unpredictable process, and Catalyst employees were in the midst of tagging all of the plants in the Clone Room on the day of the inspection. However, AMCO enforcement officers arrived much earlier than their scheduled time (1:00 instead of 2:45 PM), so all of the plants were not tagged prior to the inspection. (This is not to say that any violation should be excused due to AMCO's early arrival,

but it does show that when plants exceeding eight inches were found in the Clone Room, an effort was underway to correct the problem.)

This is a serious allegation, but the NOV does not provide reference to supporting evidence or how AMCO reached its conclusions. According to the NOV, AMCO enforcement officers appear to have based their conclusion that 114 plants were too tall on a visual inspection and estimation of height without measuring all of the plants in the Clone Room. Nor has AMCO provided any corroborating evidence showing plants that exceeded eight inches in height—for example, there were no photographs of the allegedly too-tall plants included with the NOV. Catalyst acknowledges that some plants in the Clone Room had recently exceeded eight inches, but disputes that there were 114 plants that exceeded that height. All of the plants in the facility exceeding eight inches in height have since been property tagged and recorded in Metrc.

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As explained above, Catalyst acknowledges some of the accusations in the NOV and has taken steps to remedy those shortcomings. Catalyst disputes the allegations regarding the number of immature plants in the Clone Room, and requests that no further punitive action be taken on this case.

Sincerely,

BIRCH HORTON BITTNER & CHEROT



Jason Brandeis (Jul 22, 2022 14:45 AKDT)

Jason Brandeis

JMB:ajl



## MEMORANDUM

8/10/22

To: James Hoelscher, Chief Investigator

From: Joe Bankowski, Special Investigator I

RE: Response to Catalyst Cannabis NOV  
Case #AM221280

This memo is in response to portions of the July 22<sup>nd</sup>, 2022 correspondence from Jason Brandeis on behalf of Catalyst Cannabis Company.

### 2. Untagged Plants – Veg Room

Please see attached photographs of the two untagged plants located in the Veg Room.



### 3. Untagged Plants – Flower Room A

The response states “Catalyst acknowledges that there were errors with the plants in this room, but disagrees with the enforcement officer’s conclusion that there were two untagged plants”. Please see attached photographs of two (2) untagged plants that were located in this room, one in a front row and one in an interior row.





#### 4. Untagged Plants – Clone Room

Please see the attached photographs of plants located in the clone room. Although in this instance they were not measured with a ruler, the photographs show multiple points of reference that a layperson could use to accurately estimate as being significantly over 8 inches tall.









Inv. Bankowski

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

# Notice of Violation

(3AAC 306.805)

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Date: 9/2/22

License #/Type: 10015 Standard Marijuana Cultivation Facilities

Licensee: Leif Abel

Address: 56475 Sterling Hwy, Kasilof, AK

DBA: Greatland Ganja, LLC

AMCO Case #: 22-1595

This is a notice to you as licensee that an alleged violation has occurred. If the Marijuana Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

Note: This is not an accusation or a criminal complaint.

AMCO has received complaints of marijuana odor from your facility and being able to see plants from the public right of way (Sterling Highway).

Please direct your attention to 3 AAC 306.430: Restricted access area which reads in part (b) A marijuana cultivation facility shall conduct any marijuana growing operation within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Where not prohibited by local government, outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight- obscuring wall or fence at least six feet high. (c) A marijuana cultivation facility shall ensure that any marijuana at the marijuana cultivation facility (1) cannot be observed by the public from outside the marijuana cultivation facility; and (2) does not emit an odor that is detectable by the public from outside the cultivation facility except as specifically allowed by a local government approval.

Certified Mail 7018 0360 0000 1428 1461

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Alcohol & Marijuana Control Office  
ATTN: Enforcement  
550 W. 7<sup>th</sup> Ave, Suite 1600  
Anchorage, Alaska 99501  
[amco.enforcement@alaska.gov](mailto:amco.enforcement@alaska.gov)

Issuing Investigator: M. Chiesa

Received by:

SIGNATURE: *F.R. Hamilton*

SIGNATURE:

Delivered VIA: Email

Date:







## Marijuana Odor & Observed Changes Required in Regulation

Dear Marijuana Control Board and Director,

I believe that regulations should make sense, be achievable for a business, and be easily enforceable for regulators. By these standards 3 AAC 306.430. (c) (1) and (2) are problematic.

The State of Alaska regulations allow that “A marijuana cultivation facility shall ensure that any marijuana at the marijuana cultivation facility does not emit an odor that is detectable by the public from outside the cultivation facility except as specifically allowed by a local government approval.” Currently, in the KPB, if a borough or state inspector notes a cannabis smell, with their nose, outside the licensed premise of a facility, the licensee may get a State NOV (Notice of Violation).

This is problematic on several levels.

1. What training do borough or state inspectors receive in identifying cannabis versus other scents and weather patterns that effect the smells? Cannabis has the same terpenes (smells) as many other plants. An example is Pinene, a terpene found in spruce trees and cannabis.
2. An individual saying that they smell something is not good enough evidence when a business could suffer relatively stiff financial consequences stemming from the accusation. A business may be told by the state to install a better odor control system that might cost \$100,000 or more. This should not be done based on odor detected by one individual’s olfactory sense. Furthermore, insurance companies and Banks are using NOV’s to determine pricing and service. Every NOV costs a licensee an untold amount for as long as they operate.
3. This puts the Kenai Peninsula Borough and the State AMCO investigators in an uncomfortable position from a legal perspective. Borough code/planning folks and AMCO investigators are being asked to make what amounts to a subjective decision about whether a business is emitting cannabis odor or not.
4. Home growing is legal in Alaska. How do the code enforcers or AMCO enforcers know if the smell is from an unregulated grow, that could be located anywhere, versus a licensed grow?
5. Many times, multiple licenses are operated near one another. How does a code enforcer or AMCO investigator know which business is emitting the smell? Air movement makes this impossible.
6. There is no evidence that cannabis odor is dangerous.
7. In Washington State companies sued over this exact issue and the State of Washington was forced to buy very expensive electronic “sniffing machines” that showed evidentiary data, so the state was not at risk of lawsuit. Interestingly enough, they discovered that a pine forest puts off more VOC’s in the form of Pinene than cannabis does. The result determined, was that, even with machines, from an evidentiary perspective, it is impossible to prove where a terpene smell might come from.

In short, there is no way to prove where the smell comes from.

The State of Alaska regulations say:

*3 AAC 306.430. Restricted access area (a) A marijuana cultivation facility shall conduct any operation in a restricted access area in compliance with 3 AAC 306.710 and this section. (b) A marijuana cultivation facility shall conduct any marijuana growing operation within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Where not prohibited by local government, outdoor*

## Marijuana Odor & Observed Changes Required in Regulation

*production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight- obscuring wall or fence at least six feet high. (c) A marijuana cultivation facility shall ensure that any marijuana at the marijuana cultivation facility (1) cannot be observed by the public from outside the marijuana cultivation facility; and (2) does not emit an odor that is detectable by the public from outside the cultivation facility except as specifically allowed by a local government approval.*

It is obvious from these regulations that the board intended to license grows outdoors, within fences, not only in buildings or greenhouses. Furthermore, the board approved licenses as such. Meaning they approved growers who specifically applied to grow outdoors, like us. With the way the regulation is written “cannot be observed by the public” any of the fenced in operations are at risk of violation. This is unacceptable for the following reasons.

1. The Board could appear to be setting up outdoor licensees for violations. Any aircraft, tall truck, or hiker on a mountain with a telephoto lens would cause them to be in violation. The regulation has no parameters for clarity of view or distance and therefore is not enforceable.
2. In the event a person disliked commercial cannabis, a complainant could complain, not because they could identify a section of green vegetation as cannabis but because they knew the location was a cannabis farm.
3. How far away is a cannabis plant identifiable?
4. What proves that a person can identify cannabis with only their eyes?
5. Could a person who saw a green color through a greenhouse wall also say they were “observing” cannabis?
6. How does a person know they observed cannabis from a distance?

A way to cultivate outdoors has been approved by the board that is impossible to carry out without violating the current interpretation of the same regulation. Outdoor cultivations, secured inside fencing, should continue to be allowed, they have caused no more problems for the state than any other cultivator. Outdoor growing is far more friendly to the environment than indoor growing.

What is the safety or health risk to the public for them to occasionally smell or glimpse cannabis?

I contend that it is not a public health or safety problem for the odor or sight of cannabis plants to be detected or observable by the public. These facilities have secured perimeters and we are required to public notice what we do here. We are not, and the board does not, want us to be invisible to the public. The public gets to know where we are. Our sight obscuring fences, locks, alarm systems, and cameras are sufficient to protect diversion of the plant material to the public.

Because of these obviously problematic regulations, the Marijuana Control Board should remove the following regulation (3 AAC 306.430. (c) (1) and (2) immediately. The board should also strike all NOV’s given for these regulations. They are not defensible by the state.

*3 AAC 306.430. (c) A marijuana cultivation facility shall ensure that any marijuana at the marijuana cultivation facility (1) cannot be observed by the public from outside the marijuana cultivation facility; and (2) does not emit an odor that is detectable by the public from outside the cultivation facility except as specifically allowed by a local government approval.*

## Marijuana Odor & Observed Changes Required in Regulation

We are a violation free company that works very hard to remain compliant and keep both the public and our employees safe. Over the years we have appreciated working with AMCO to understand how to remain compliant. We have found both licensing staff and enforcement pleasant to work with and very informative. Enforcement should have clear guidelines and be directed (through regulations that make sense) to focus on the areas that increases public health and safety. Enforcement can only work with the regulations and guidance the board gives them.

Due to the above stated reasons I request to appear before the board and be heard, regarding this alleged NOV.

Highest Regards,

Leif Abel

Greatland Ganja, LLC