



MEMORANDUM

TO: Marijuana Control Board

DATE: August 2, 2021

FROM: Glen Klinkhart, Director

RE: Probation Violation - Fairbanks Analytical Testing (F.A.T.) laboratory

Some of the board members may recall at your March 31, 2021 during an executive session with a representative from the Admirative Hearing Officer/Judge you reviewed a proposed settlement agreement between AMCO and Fairbanks Analytical Testing, LLC (F.A.T.) regarding ongoing laboratory issues/violations.

The board later voted to accept the agreement between the board (AMCO) and the respondent, Fairbanks Analytical Testing (F.A.T.). The agreement was finalized and signed by all of the parties on or about May 5, 2021.

During the prior six months of settlement negotiations the respondent (F.A.T.) was well aware of the accusations, had time to prepare, and to perhaps fix any and all issues the audit by the State of Alaska had discovered. By the time the settlement was reached, Fairbanks Analytical Testing (F.A.T.) agreed to the probationary stipulations, including, but not limited to, their historical inability to respond in a timely manner to requests/repairs/correction requests by the auditors and/or AMCO.

Specifically, the probationary settlement noted, and the respondent, Fairbanks Analytical Testing (F.A.T.), agreed to:

A future probation violation(s) is conditioned upon an error(s) and/or violation(s) found in an audit described above or for failure to timely respond to audit information request within thirty calendar days. Further, it is understood by the parties that Respondent's failure to respond and/or correct an error/violation found in an audit within 30 days will act as a trigger point for a probation violation.

Additionally, Fairbanks Analytical Testing (F.A.T.) agreed to additional audits of their testing processes and procedures:

While on probation, Respondent is subject to random audits by AMCO by DEC acting on behalf of AMCO. Respondent should expect to be audited a minimum of one time per probation year.

Shortly after the mediation settlement was signed on May 5, 2021, The State of Alaska, Department of Environmental Conservation (DEC) began a new audit of Fairbanks Analytical Testing (F.A.T.). On May 25, 2021, the audit of FAT revealed multiple issues which were documented and provided to Fairbanks Analytical Testing (F.A.T.) for response and/or correction. On June 3, 2021 specific written notice from DEC and AMCO was sent notifying F.A.T. they had 30 days to respond and/or correct the items requested of them. Thirty (30) days later, only 7 of the 30 findings found by DEC had been responded to and/or corrected by Fairbanks Analytical Testing (F.A.T.).

On July 2, 2021 the Alcohol Marijuana Control Office notified Fairbanks Analytical Testing (F.A.T.) of an impending suspension of their license under the mediated settlement agreement. An attorney for Fairbanks Analytical Testing (F.A.T.) requested a stay of the suspension and the matter is now being brought forth to this board for your final consideration.

As of the writing of this memorandum, DEC has indicated there are still 19 DEC findings of F.A.T. which remain open and have not yet been satisfactorily responded to and/or corrected by the laboratory.

NOTE: Fairbanks Analytical Testing (F.A.T.) is still under investigation and consideration for the new findings by DEC as possible accusations given the issues discovered in the May 2021 audit.

RECCOMENDATION:

The Alcohol Marijuana Control Office is recommending the board utilize the probation provision of the mediated settlement of May 5, 2021 between the board and Fairbanks Analytical Testing (F.A.T.) to immediately suspend their operating license for the maximum allowable time of 60 days.



Glen Klinkhart
Director
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