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Via Electronic Delivery

Erika McConnell
Alcohol and Marijuana Control Office
550 W. 7th Avenue, Suite 1600
Anchorage, AK 99501

RE: Steep Hill Alaska
Our File No.: 507587.1

Dear Director McConnell:

I am writing on behalf of my client, Steep Hill Alaska (SHA). As you know, SHA has been a leading voice in the effort to ensure that all cannabis and cannabis products produced and sold in Alaska are tested with proven and appropriate methods and that reported results are accurate. SHA itself performs testing of cannabis and cannabis products according to the most highly validated methods available. SHA uses protocols developed and proven by the leading testing organization in the United States, Steep Hill Global (SHG), and currently used in seven states. SHA has completed the Emerald Test, an Inter-Laboratory Comparison and Proficiency Test program for cannabis testing labs, constantly consults with the most experienced chemists in Alaska and elsewhere, including the scientific staff at SHG and at Shimadzu Scientific Instruments, its instrument supplier. SHA is confident in, and stands by, all of its test results.

SHA is therefore quite concerned with AMCO's recent Public Service Announcement No. 18-003 ("PSA") which stated that "state-licensed marijuana testing facilities have reported results that appear to be inconsistent and may be inaccurate." As one of only two fully operational testing labs in the state, this statement clearly includes SHA's activities, and SHA categorically rejects the contention that its results may be inaccurate. With this statement, AMCO is unfairly and inappropriately maligning SHA's activities. AMCO has no legal or scientific basis for concluding that SHA's test results may be inaccurate and by releasing such a statement, AMCO casts doubt on SHA's credibility as a marijuana testing facility and undermines confidence in the entire industry. Accordingly, as explained in more detail below, SHA requests that AMCO rescind this PSA and issue a revised and clarified statement.

The PSA is troubling for several reasons. To begin, AMCO's conclusion that testing results may be inaccurate is overly broad, lacks specificity, and is not a proper scientific or legal conclusion. This conclusion was issued absent formal administrative procedures and without verifiable scientific results. While AMCO may be "vigorously" investigating inconsistencies in testing results, there does not appear to be any scientific rigor, sample control, chain of custody protection, or consistent information used to gather the results that support this PSA. The only information available about the process was discussed at the public meeting on Tuesday of this

week, and the methods used to date by AMCO to draw conclusions about the adequacy and accuracy of testing are insufficient. A discrepancy in test results is concerning and warrants additional investigation, but the methods employed lack scientific rigor and at this time cannot be relied upon to reach any conclusion other than that the different labs produced different results.

Absent additional formal investigation, the PSA was premature. Neither the Marijuana Control Board nor AMCO have conducted any independent analysis of any cannabis or product, as they have acknowledged. AMCO has requested information from SHA that could provide insight into testing methods, but even that information has not yet been audited. There is absolutely no basis for a state agency to make a public statement disparaging the accuracy of SHA's testing capabilities. By doing so, AMCO has called SHA's reputation into question without any scientific evidence, without an audit of its processes, without issuing a Notice of Violation, and without respecting due process. Again, all that exists at this time is evidence of a discrepancy between laboratories, which does not automatically equate to inaccuracy. More to the point, while some results may be inaccurate, the statement does not specify which ones might be inaccurate, or why. By lumping all labs together and publicly claiming that testing results from either lab may be inaccurate, AMCO undermines the stability of the industry as a whole, and is directly affecting SHA's business.

AMCO's statement could subject SHA to civil liability, could jeopardize future business opportunities for SHA, and could cause SHA to suffer other damages. Therefore SHA must now consider legal options to protect its reputation and brand, which have been, and will continue to be, impacted by this statement. To mitigate this harm, SHA requests that AMCO do the following no later than Wednesday, January 10, 2018: (1) rescind PSA No. 18-003; (2) issue a statement clarifying that the rescinded PSA was not intended to malign any particular lab and that while there are discrepancies, there is no conclusive evidence of inaccuracy at this time, and an investigation is ongoing; and (3) issue a revised PSA which amends certain statements as follows: the first paragraph should be revised to state, "The Marijuana Control Board and the Alcohol and Marijuana Control Office (AMCO) have learned that state-licensed marijuana testing facilities have reported results that appear to be inconsistent with one another." The third paragraph should be revised so that the third sentence is deleted or is replaced with text reading, "One testing facility, Steep Hill Alaska, found a potentially dangerous mold on a product, but the other testing facility, CannTest, failed to detect it."

These revisions will change the tone of the statement from one alleging both labs' inaccuracy in testing results, which is itself an inaccurate unverified conclusion, and will instead emphasize that there are inconsistencies and that consumers should be aware. The revised language properly supports public health and safety without disparaging SHA's business.

In conclusion, SHA understands that a state agency entrusted with protecting public health and safety must err on the side of caution. But the agency must also regulate the industry in a fair and proper manner, and employ sound practices before making conclusive statements that affect the legal rights of actors in the industry. As the lab which has been proactive in trying to address inconsistencies in testing results, SHA is obviously very concerned with ensuring

there is adequate and accurate testing in the state. SHA believes that inaccurate testing is a public health concern, and is eager to work with AMCO in order to improve cannabis and cannabis product testing in the State of Alaska. SHA will not, however, allow for unsupported public statements by a state agency which malign its practices. It was improper for AMCO to publicly state that SHA's testing may be inaccurate and we hope that AMCO will quickly remedy this situation.

Thank you for your time and consideration. Please do not hesitate to contact me if you have any questions or require any additional information.

Sincerely,

BIRCH HORTON BITTNER & CHEROT

Jason Brandeis

JMB:dsg