

Notice of Violation

(3AAC 306.805)

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Date: 04-05-18

License #/Type: #10489 Limited Cultivation

Licensee: John Collette

Address: 2960 Ester Dome Road, Fairbanks, AK

DBA: Ester Horticulture and Research

AMCO Case #: AB17-0000445

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 discovered two METRC Transport Manifests dated 08-21-17 from two facilities conflicted each other. The first manifest, #96523 was from RCFC, LLC, License #10005. The manifest stated Handler Devron Hellings would be the transporting party. The route to be traveled noted a Nissan Versa would be used to drive from RCFC's facility to the Fairbanks International Airport with specific directions, then via a specific flight, and lastly to Canntest Lab in Anchorage via a Honda Civic, again with specific directions. The departure time was to be 11 am and arrival time 3 pm. The actual time received at Canntest is indicated as 5:03 pm.

The conflicting manifest, #96401, originated from Ester Horticulture and Research, License #10489. The transporting party was indicated to be Devron Hellings as well. The vehicle used to transport the product to Rosie Creek Farm is not documented. In their manifest, the route is indicated to be from their facility to RCFC, LLC's facility. The exact route is not written. The route then goes to a Fred Meyer's gas station. The route from Rosie Creek Farm's facility to the gas station did not contain specific directions either. From the gas station the Fairbanks International Airport were then documented in detail as required. The route continued to document a specific flight; the same flight indicated on RCFC, LLC's manifest. The route ended with the arrival in Anchorage. It did not outline the route to be traveled to Canntest. The time of departure was 10:30 am and arrival time 3 pm. The actual time received was 3:51 pm.

Based on the conflicting information, it is unclear which vehicle(s) and transporter(s) were actually used to transport the products from the two facilities to the airport and on to Anchorage. It is unclear as to why the products were not received at Canntest at the same time since both manifests indicate the products were transported by Devron Hellings. RCFC, LLC's manifest is missing at least one stop, the Fred Meyer's gas station.

This is a violation of: 3 AAC 306.435 (b) Marijuana Inventory Tracking System, 3 AAC 306.730 Marijuana Inventory Tracking System, and 3 AAC 306.750 Transportation.

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. A licensee may respond, either orally or in writing, to the Notice. 3 AAC 306.810(3)(A)(B)(C) failed, within a reasonable time after receiving a notice of violation from the director, to correct any defect that is the subject of the notice of violation of AS 17.38 or this chapter, a condition or restriction imposed by the board or other applicable law.

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 Establishment 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: A. Stonecipher

SIGNATURE:



Delivered VIA: Email

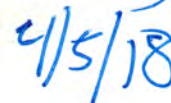
Received by:



SIGNATURE:



Date:



Article #

Response to Notice of Violation, Amco Case AB17-0000445

The notice of violation is an allegation that Ester Horticulture and Research, #10489 is, somehow, in violation of regulations concerning a Metrc transfer manifest.

Amco Investigator Stonecipher alleges that an error in a transfer manifest is attributable to two Fairbanks growers who wanted nothing more than to obtain testing of their products from Canntest in Anchorage.

Ester Horticulture was given e-mail information about the automobile, the route, driver etc, from the transporter, and entered that information to Metrc. It is alleged the information given was insufficient. However, the information needed for the manifest could ONLY come from the transporter and was unverifiable by the growers. To repeat: There was (and is) no way the grower could (or can) determine whether the route information from the transporter was (or is) accurate or not.

In this instance, the transporter was new to Metrc but learned very quickly. The transporter has since included in her information every stop, every, route, and information on automobiles used. Due to the complexity and number of stops necessary to transport a ever growing number of test samples, the manifest now runs to two pages. **WHATEVER PROBLEM EXISTED HAS SINCE BEEN FIXED.**

There is currently a minor revolution in legal thinking concerning whether anyone should be held accountable for something beyond his or her control. Our legal system has often punished those who merely stumbled into wrongdoing, regardless whether they intended to or not. That flimsy legal justification, now most often held in open ridicule, was that the wrongdoer **SHOULD HAVE KNOWN.**

At the federal level, prosecutors frequently must be reminded that for centuries the alleged wrongdoer's intent has been an essential and primary element in enforcing a rule or regulation. For the last couple of

decades, in the interest of expediency, our legal system has overlooked the centrality of intent and, in the process, inflicted great harm on many innocent people. To our embarrassment, we are once more forced to re-learn the basics of fundamental justice. This NOV falls directly within this lesson.

Since violations under the AMCO rules are cumulative and additive with ever rising consequences, Ester Horticulture denies having any responsibility in violating any regulation involving the Metrc manifest cited by Ms. Stonecipher. Ester Horticulture requests a hearing before the board at its June meeting.

Ms. Stonecipher related to Ester Horticulture that she was aware that the insufficient information on the manifest was not attributable to Ester Horticulture, but to the transporter. The transport information must necessarily come from the transporter, but transporting only requires a handler's card. Since there are no regulations applicable to transporters, Ms. Stonecipher admitted she was left with no alternative but to issue NOV's to the licensed entities.

This would seem to be an issue for future regulation, not as a means to punish those who are innocent of wrongdoing, but happen to be ready targets within the current regulatory scheme.

Why Ms. Stonecipher didn't issue an advisory that transfer manifests should be created with greater care, (to be sure everyone was on notice), is incomprehensible. That she didn't solve the perceived problem with the least time and effort but, instead, issued formal violations to those who were forced to use the only information available, is inexcusable.

Regards,

John Collette
Ester Horticulture and Research
Fairbanks
907-479-0706