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## Medical Marijuana Update/Disposal Impacts: Walter Wright (Mitchell Williams) Arkansas Solid Waste Conference Presentation

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I undertook a presentation at the Arkansas Solid Waste Conference in Hot Springs, Arkansas, titled:

*Medical Marijuana Update/Disposal Impacts ("Presentation")*

The *Presentation* addressed two of the issues relevant to the solid waste management industry associated with Arkansas's enactment of the Medical Marijuana Amendment ("AMMA"):

- Employee issues associated with the legal use of medical marijuana
- Medical marijuana cultivation and dispensary waste generation issues

The Arkansas Medical Marijuana Amendment ("AMMA") decriminalizes from a state (Arkansas) standpoint certain use of marijuana. Further it establishes the regulation of cultivators and dispensaries. Nevertheless, marijuana is still illegal at the federal level as a DEA Schedule I controlled substance.

As to medical marijuana Arkansas employment issues, it was noted that a process has been established in which a "Qualifying Patient" can use medical marijuana. A doctor must certify that the patient has a "qualifying medical condition." However, the AMMA does not require an employer to accommodate the ingestion of marijuana in a workplace or an employee working under the influence of marijuana. The AMMA does restrict an employer's ability to discriminate against a Qualifying Patient. However, as especially relevant to the Solid Waste Management Association industry, safety sensitive positions can exclude Qualifying Patients.

The *Presentation* suggested the creation of written job descriptions which designate safety sensitive positions as appropriate. The AMMA permits employers to exclude a Qualifying Patient from being employed in or performing a safety sensitive position based on the employer's good faith belief that the Qualifying Patient was engaged in the current use of marijuana.

- A safety sensitive position is defined as "any position designated in writing by the employer as a safety sensitive position in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety." Creating written job descriptions which designate certain jobs as "safety sensitive positions" permits employers to exclude job applicants and employees with medical marijuana registry i.d. cards from those positions.

The *Presentation* also noted:

- Employees shown to be impaired on the job may be disciplined and discharged by an employer

- Employee handbooks should specifically address/ban use of medical marijuana in the workplace
- A policy might be instituted that requires employees to disclose use of medication that may impair their ability to work if this request is job-related and consistent with business necessity

A caveat regarding medical marijuana use by Arkansas organizations was noted:

- Federal government contractors subject to the Drug Free Workplace Act of 1988 should continue to follow all the requirements of the Act, even in states permitting marijuana use by employees
- Department of Transportation-substance abuse regulations may trump state marijuana laws

The second part of the Presentation addressed the Alcohol Beverage Control (“ABC”) regulation of cultivation and dispensaries. In particular, the ABC regulations address facility security, packaging, structure design, and disposal of medical marijuana wastes.

The ABC regulations require that medical marijuana being disposed of (i.e., waste) be rendered “unusable.” Medical marijuana wastes and other wastes generated by the cultivation and dispensary processes were identified:

- Plants (including stalks, roots/soil) and unusable marijuana liquid concentrate or extract
- Solid concentrate or extract
- Examples:
  - Trim and solid plant material used to create an extract
  - Waste solvent
  - Laboratory waste
  - Extract that fails to meet quality testing
  - Used reactants
  - Residual pesticides/fertilizers
  - Cleaning solution
  - Lighting ballasts

ABC Regulation 18.1 specifically addresses disposal of marijuana by cultivation facilities and dispensaries. Key provisions of this rule require that medical marijuana is rendered unusable by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mix is at least 50% non-cannabis waste by volume. If so, such materials can be transferred to a solid waste landfill, incinerator, etc., or compostable to such facilities.

RCRA Subtitle C wastes as part of the extraction process will likely be generated.

The need for solid waste management facilities and companies to address from a contractual standpoint medical marijuana waste generated issues was discussed. Topics included:

- Potential liability for improper disposal of medical marijuana wastes
- Need to allocate liability in service agreements
- Generator warranty/certification that waste meets definition of unusable
- Use of waste profile
- Provisions for indemnity, rejection, expense for sending back, etc.

It was suggested that landfill operating procedures consider the need for immediate burial, etc., to prevent scavenging.

A copy of the slides can be found [here](#).