

BEFORE THE CANNABIS CONTROL DIVISION
FOR THE STATE OF NEW MEXICO

IN THE MATTER OF:

Case No. 2023-015

Native American Agricultural Development Company,
License No. CCD-2022-0868,

Respondent(s).

NOTICE OF CONTEMPLATED ACTION

TAKE NOTICE that the Superintendent of the Regulation and Licensing Department (“Department”) and the Cannabis Control Division (“Division”) is contemplating taking disciplinary action against the license held by Native American Agricultural Development Company (“Respondent”). The Department and the Division have before them sufficient evidence that, if not rebutted or satisfactorily explained at a formal hearing, will justify the Department and the Division revoking, suspending, issuing fines, or taking other disciplinary action against the Respondent’s license. If Respondent does not request a hearing within twenty days after service of this Notice of Contemplated Action (“Notice”), the Department and the Division will proceed to take the action contemplated in this Notice, and such action will be final and not subject to judicial review. Respondent may also request a settlement conference to determine whether a compromise of the penalty may be reached.

APPLICABLE LAW

1. Respondent is licensed pursuant to the Cannabis Regulation Act (“CRA”), NMSA 1978, Sections 26-2C-1 to -42 (2021), and as such is subject to the jurisdiction of the Department and Division. The Department and Division have jurisdiction over this disciplinary action pursuant to the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 to -36 (1957, as amended through 2021).
2. This Notice is based upon the following alleged statutory or regulatory violation(s):

VIOLATION #1: Plant Count Exceeded

RULE CITATION OF VIOLATION: 16.8.8.9 NMAC

DESCRIPTION OF VIOLATION #1 AS IT PERTAINS TO RULE:

Licensees must only grow the number of cannabis plants for which they are approved and may not exceed their allotted plant limit. Respondent far exceeded their plant count.

VIOLATION #2: Insufficient Plant Fees Paid

RULE CITATION OF VIOLATION: 16.8.11.11(A) NMAC

DESCRIPTION OF VIOLATION #2 AS IT PERTAINS TO RULE:

Licensees must pay a fee of five (5) dollars for each mature cannabis plant for which they are approved to grow for commercial use. Respondent was found to be growing mature cannabis plants in excess of their approved count without paying the requisite plant fees.

VIOLATION #3: Non-Use of Required Track and Trace Software

RULE CITATION OF VIOLATION: 16.8.2.8(J) NMAC and 16.8.7.8 NMAC

DESCRIPTION OF VIOLATION #3 AS IT PERTAINS TO RULE:

Licensees must track all cannabis seeds, clones, plants and products in the required online inventory tracking software, BioTrack. Respondent had not entered any information into BioTrack despite actively producing cannabis plants.

VIOLATION #4: No Chain of Custody Procedures in Place

RULE CITATION OF VIOLATION: 16.8.2.12 NMAC

DESCRIPTION OF VIOLATION #4 AS IT PERTAINS TO RULE:

Licensees shall adopt, maintain, and enforce chain of custody procedures and documentation requirements to ensure appropriate tracking and tracing of cannabis and cannabis products. Respondent did not have written chain of custody procedures onsite, as required by rule.

VIOLATION #5: Improper Security Measures

RULE CITATION OF VIOLATION: 16.8.2.10 NMAC

DESCRIPTION OF VIOLATION #5 AS IT PERTAINS TO RULE:

Licensees must ensure that proper security measure to keep cannabis and cannabis product stored safely to prevent degradation and prevent diversion or inversion of the product, including having functioning digital surveillance systems and security alarm systems in place. Respondent did not have a functioning digital surveillance system nor a functioning security alarm system in place.

VIOLATION #6: Minimum Requirements for the Production of Cannabis Not Met

RULE CITATION OF VIOLATION: 16.8.2.27(F) NMAC

DESCRIPTION OF VIOLATION #6 AS IT PERTAINS TO RULE:

Licensees must meet certain minimum requirements in order to produce cannabis, including, but not limited to, meeting certain health and safety standards, establishing and following a pest control plan, and establishing and following a cannabis wastage procedure. Respondent's facilities did not meet minimum production requirements on account of rubbish found throughout the facility, and evidence of pests found on cannabis plants.

VIOLATION #7: Lack of Required Quality Assurance Testing

RULE CITATION OF VIOLATION: 16.8.7.15 NMAC and 16.8.2.40(G)(1)(d) NMAC

DESCRIPTION OF VIOLATION #7 AS IT PERTAINS TO RULE:

Licensees must ensure all cannabis and cannabis product has passed all required testing prior to making cannabis or cannabis product available for sale and must log testing results in BioTrack. Respondent has not conducted a single quality assurance test despite having cannabis plants and product on-site.

VIOLATION #8: Lack of Required Standard Policies and Procedures

RULE CITATION OF VIOLATION: 16.8.2.26 NMAC

DESCRIPTION OF VIOLATION #8 AS IT PERTAINS TO RULE:

Licensees must develop, implement, and keep on their premises standard policies and procedures, which should include processes related to chain of custody, employee health and safety, transportation of cannabis, sample collection of cannabis for required quality assurance testing, and remediation of cannabis that does not meet required quality assurance standards. Respondent had not developed and standard policies and procedures.

SUMMARY OF THE EVIDENCE AGAINST RESPONDENTS

3. The general nature of the evidence before the Division is as follows:
 - a. Testimony by compliance officers present on-site;
 - b. Documentation created by compliance officers present on-site;
 - c. Documentation related to Respondent's license;
 - d. Photographs collected by compliance officers present on-site; and
 - e. Reports generated by compliance officers from the online inventory tracking system, BioTrack.

RIGHTS AND OBLIGATIONS OF RESPONDENT

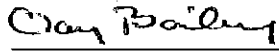
4. **Unless Respondent requests a formal hearing, the evidence before the Division is sufficient to justify the Division in taking the contemplated action.**
5. The formal hearing, if requested, will be conducted pursuant to the ULA as provided by Section 61-1-8. Section 61-1-8 provides that:
 - A. A person entitled to be heard under the Uniform Licensing shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the

commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the Division or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the Division or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.

- B. Upon written request to another party, any party is entitled to: (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing. The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No request shall be made less than fifteen days before the hearing.
- C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

- 6. **If Respondent does not request a hearing in this matter, the Division will take the contemplated action by default. See § 61-1-4(D)(3). If no hearing is requested, this disciplinary action will not be subject to judicial review. See § 61-1-4(E).**
- 7. To request a hearing in this matter Respondent must deposit in the mail a certified return receipt requested letter addressed to the Division containing a request for a hearing within twenty days after services of this notice. See § 61-1-4(D)(3). A written request for a hearing should be sent to the following address:

Robert Sachs, Division Counsel
Cannabis Control Division
2550 Cerrillos Road
Santa Fe, NM 87505

 on behalf of Superintendent Trujillo
Linda Trujillo, Superintendent
Cannabis Control Division

Prepared by:

Robert Sachs
Division Counsel
Cannabis Control Division, Regulation and Licensing Department

1209 Camino Carlos Rey
Santa Fe, NM 87504
Robert.Sachs@rld.nm.gov
(505) 948-8609

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed to Respondent by United States Postal Service Certified Mail, return receipt requested, on this 12th day of October 2023 to the following:

Native American Agricultural Development
Company,
597 Hwy 41
Estancia, NM 87016

Certified Mail No: 9171 9690 0935 0299 2455 30
Return Receipt Requested

I hereby certify that a true and correct copy of the foregoing was e-mailed, on this 12th day of October 2023 to the following:

Native American Agricultural Development
Company
Respondent
Email: naadc2018@gmail.com

By: Victoria Kaniatobe
Victoria Kaniatobe
Law Clerk
Cannabis Control Division