Vermont Cannabis Apothecary Inc.
MANU0014
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VT CCB Exit Letter

This is a letter to the VT CCB regarding the closure of my Tier 2 VT cannabis manufacturing business. My understanding is that the VT CCB wants to know the reasons for the closure, ostensibly to make improvements to the VT industry as a whole and particularly for small Vermont businesses. While a checklist of possible reasons was asked of me by my compliance officer at the closure inspection, it was not inclusive of all the issues I encountered as a manufacturer (both Tier 1 and Tier 2). For this reason I am taking the time to write a detailed response in hopes of highlighting more of the industry problems from a manufacturing perspective.

Tier 1 manufacturing license is not viable -

In 2022, as the market opened, I questioned the $10,000 revenue cap on a Tier 1 license before I applied. I had already done a business plan and knew that between start-up costs and operational costs it would likely take a minimum of $100,000 in revenue to cover breakeven, more to be profitable. Despite the intent for Tier 1 licenses to be an opening for VT small cannabis business, Tier 1 has proven to be useless even with having raised the cap to $50,000.

Possible Remedy?

Make Tier 1 licenses that are viable for small producers. If the intent of the original statute is to encourage small craft producers and legacy operators to enter and remain in the market, the Tier 1 licenses have to be viable. A reasonable license fee (not the Tier 2 fee) and revenue cap that allows profitability, 100k or more is necessary to achieve this.

Economic Empowerment does nothing -

I applied and was approved for a Tier 1 Manufacturing License under “Economic Empowerment”. However well intended, that designation was unfortunately worthless as there was no available financial or technical assistance, such as a reduction in fees or an expedited licensing process.

Possible Remedy?

Under the original statute, Economic Empowerment is supposed to help women, minorities, and those with **low incomes.** Lowering the fees for the first 5 years, like what is done for those with Social Equity designation, could make a powerful impact on businesses' ability to stay in the market long enough to become established and profitable.

Difficulty Getting Products to Market -

There are several factors preventing manufacturers from getting products to market.

<u>Packaging</u> -

The no plastic packaging rule has been a huge problem from the beginning for a multitude of reasons.

Manufacturers have the most stringent requirements as the **packaging must also be Child Resistant (CR) as well as non-plastic.** The options are extremely limited, expensive, and must be ordered in advance (4-6 weeks) because **all CR packaging comes from China.** Because of this, there are high Minimum Order Quantities (MOQ) requiring the purchase of hundreds of units (or more) at a time. **<u>We are also dealing with Tariffs which heavily ramp up the price of the packaging.</u>** The glass jars, metal tins, and cardboard CR non-plastic packaging ordered to package our VT cannabis products are shipped in cardboard with HUGE amounts of plastic bubble wrap, plastic wadding, and plastic sleeves to protect the non-plastic packaging. While well intended, the plastic ban has **greenwashed VT cannabis packaging. Not only are we bringing in FAR MORE plastic waste into Vermont, we are also bringing in non-plastic packaging that is not being reused or recycled.** Despite the suggestion to start a recycling/reuse program, there is no GRAS for sterilization and reuse so insurance companies would not insure us for that practice.



The limited packaging is also **not suitable for most food** items as they are not airtight and products go stale very quickly and/or products simply do not fit in these forms of packaging. The VT CCB has recently granted waivers for new packaging including a CR pouch that will be helpful dealing with this issue, but at this point it is 2 years too late for my business.

Possible Remedy? Appropriating $200,000 from the excise tax on cannabis products for an industrial composting complex to handle the non-plastic packaging that requires the heat of an industrial composter. This would allow for more non-plastic CR packaging options for the VT cannabis industry as well as benefiting the entire state of VT. Beyond providing industrial composting, it creates jobs, provides revenue by selling the compost, and significantly reduces plastic waste in Vermont. https://compostingtechnology.com/ **Pending positive results, the VT CCB, legislators, and cannabis industry could then commit future excise tax funds to strategically installing a network of these complexes to benefit the entire state. This**

would provide several quantifiable improvements that benefit everyone in VT, financed by the excise tax from the VT Cannabis Industry.

Future Problems - When cannabis is legal/regulated at the federal level, Vermont producers will struggle to compete with other states/brands of cannabis products because of the cost of non-plastic CR packaging. Cost Accounting shows us that the non-plastic CR packaging required for our edible products is 25-50% or more of the cost to make the product. All Vermont Cannabis Edible products will find selling products outside of Vermont to be impossible due to lack of the ability to compete on pricing.

<u>Wholesalers/Apex</u> -
There are several issues with wholesalers.

There are very few (**really only one)** that are handling most of the vendors/products. Because of this, they limit the number of products they will list on the Apex online menu. Despite my company making 40+ products, I was only able to list 10. At this point **90% of retailers have moved away from dealing with individual businesses in favor of ordering off Apex**. Retailers note that it is too much work/cost to deal with individual vendors because it means multiple orders and deliveries costing far too much time and resources. They logically prefer to place a single order off the Apex menu with all the brands they offer, then receive it all in a single delivery.

Also, wholesalers are allowed to **directly compete** with the customer businesses they represent. They are allowed to have products white labeled/manufactured for them (typically via a Tier 3 manufacturer), put their label/brand on them, and promote them over the products they are representing. This is a **direct conflict of interest and should not be allowed** especially with a near monopoly in VT cannabis wholesaling.

Possible Remedy?

Level the playing field by **removing the direct conflict of interest.**

Also, having a **VT state run menu of products similar to Apex that could function for all VT cannabis businesses.** Most report that the cost of Apex is a very large factor ($600/month) as to why there are not more wholesalers in VT. This program could be set up and subsidized by the excise tax, then run and maintained by reasonable monthly user fees from VT cannabis businesses. It would streamline the ordering process for retailers. It would also expand the number of products available to both customers and retailers, with the potential of reducing cost and increasing efficiency across the industry. **The VT CCB would be leading the way in setting up this system and showing how states can support its emerging cannabis industry.**

<u>Retailers</u> -

One of the biggest problems getting products to market is the fact that the **retailers are the Gatekeepers of the VT Cannabis market**. **They decide what products get offered to the customer and at what price.** Despite being a manufacturer with a commitment to making high quality products at the best possible price to give as much accessibility to our products as possible, retailers have taken this as an opportunity to jack the price above its intended retail price. This slows the sale of our products but increases the profitability to the retailers. There is **zero incentive for them to discontinue this practice.** As a manufacturer, when requesting that a retailer stick to normal retail markup, the most common response was to ignore our request or stop purchasing our products. We have no way of telling customers what we make and what the intended cost should be, as we are not allowed to advertise this information. We have **no alternative** to get our products to market.

Retailers also use their ability to **directly compete** with the products/brands they sell by having products white labeled for them. They then price them lower and promote them over other brands. This increases their brand awareness and maximizes their profitability. Again there is **zero incentive for them to discontinue this practice.**

Some retailers are trying to force manufacturers (and others?) to **front them products on terms**, wanting the ability to sell/profit before they pay the vendors for their products. When I declined, they refused to carry our products. This is less of an issue now that most retailers are using the wholesaler/Apex system, yet it exists and is predatory behavior on the part of retailers.

Possible Remedy?

Allow direct to consumer sales. Order online, schedule a delivery time, the delivery driver delivers, checks ID and collects payment. This is done in other states, both medical and adult use, and is already being done in Vermont with the medical dispensaries.

Event licenses would offer another avenue for small producers to get products to market. It would also lend itself **to helping develop Agro-tourism in Vermont.** Many consumers are looking for alternatives to alcohol, so offering a “cannabis bar” at a wedding, concert, farmers market or other event is appealing to today’s consumer. This would align with the Vermont cachet and encourage (agro)tourism. Again, this is being done in other states with adult use markets. Early adoption of this would maximize first mover advantage for the Vermont Cannabis Industry.

Other issues-

1. **Changing rules stuck us with unusable packaging** ie. 50 mg max to 100 mg max packages resulted in needing to order larger packaging to accommodate the 100mg worth of products and getting stuck with hundreds of units of 50mg packaging. (I began selling in February of 2022 and by that summer 100 mg packaging was approved.) Most

retailers stopped ordering 50mg packages once the 100mg packages were available. I am stuck with hundreds of units I can't use, sell or return.

2. **Requiring a re-packaging of previously approved** 1 ounce 1200 mg Tincture packaging into 2 ounce bottles to align with the dispensing of the tincture by "dropper" not by drop. Again, I got stuck with hundreds of units.
3. **Requiring every flavor variance of a specific product be registered separately**. If the recipe is exactly the same with the only variance being the flavor/topping, separate registrations are redundant and costly.

Possible Remedy?

Consider the financial impact on producers when making rules going forward. Get feedback from the affected industry participants as to how a proposed change could negatively or positively impact them.

Conclusion - The biggest problem for a small cannabis manufacturer is the ability to get products to market as it is thwarted by multiple factors.

Possible Remedy - Make Tier 1 licenses viable for small producers. Adjust Economic Empowerment to actually benefit the low income designee. Remove the conflicts of interest currently allowed for retailers and wholesalers. Allow manufacturers (and cultivators) to sell directly to the consumer.

The failures of the cannabis industry are rolling out with a familiar pattern as more states are embracing the adult use cannabis market with legalization and regulation. The only clear winners appear to be the states and Multi State Operators. States are cashing in with exorbitant taxation, very little of which is going to make improvements in the local/state market, specifically for the small producers. MSO's have the capital. They come in, set up large operations (frequently integrated) and wait out (frequently having the capital to sell at a loss, at least for a while) the race to the bottom that takes out smaller local businesses. As more states roll out adult use, they move from state to state with their financial advantage. The pattern is clear.

While the lack of rescheduling cannabis at the Federal level has created problems with **taxes** (280e tax implications), **banking** (lack of accessibility and price gouging), and **insurance** (astronomical price gouging) <u>the problems at the state level are what **can be improved** to allow smaller businesses in the VT cannabis industry survive until rescheduling happens</u>.

The VT CCB should be looking at metrics other than the growing excise tax to determine the health, success, and viability of the VT Cannabis Industry. For me, after 2 years with 100k in revenue each year and **zero profit,** the numbers are clear. It is not possible to be profitable as a small manufacturer in the VT cannabis industry at this point in time. I am one of several cannabis business closures/non-renewals currently happening. I suspect I am not the only one who is more than willing to discuss the issues if there is any interest in our feedback. I encourage the VT CCB and legislators to take a closer look at what is actually happening to the VT Cannabis Industry. With 2 years of information to now guide you, there is enough information to help you take **proactive actions** to improve the VT industry before it follows the pattern of impending failure other states are dealing with.

It's not too late. There are opportunities for Vermont to shift from being reactive to being proactive in the Cannabis Industry. Listen to the Vermonters who have been in the trenches the past 2+ years grinding to make the VT industry's excise tax so successful. Talk to the medical patients who want/need accessibility to quality Vermont made cannabis products at a nearby AU store or delivered to their door. Talk to Vermonters who want access and affordability to all the Vermont made cannabis products available. Please, act now.