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TO: Law & Justice Committee

FROM: John T. Adams, District Attorney

RE: Intoxicating Hemp Products Hearing (with Attachment)

DATE: June 23, 2025

In Berks County we have received many complaints from parents, school districts and many others concerning stores selling vape liquids and edibles to children which cause a high or unpredictable effects. As a result, our Berks County Drug Task Force started an investigation in 2022. During this investigation, we purchased Delta-8, Delta-9, and Delta-10 products from several smoke shops and mini markets throughout Berks County.

Any products containing a Delta-9 THC concentration greater than 0.3% or containing any other THC isomers such as Delta-8 THC or Delta-10 THC is classified as a Scheduled Controlled Substance under the Pennsylvania Controlled Substance, Drug and Device Cosmetic Act. Any products classified as hemp under the Industrial Hemp Research Act cannot contain more than 0.3% of a concentration of Delta-9 THC. When we purchased these products at various stores throughout Berks County and submitted the products to the Pennsylvania State Police Lab for testing, many of the products contained higher than 0.3% THC.

According to Drug and Alcohol treatment specialists, these products may be labeled as hemp which misleads consumers who associated hemp with non-psychoactive products. But all products sold with Delta-8 and 10 are psychoactive substances. They can cause unpredictable affects including increased heart rate, lightheadedness, and paranoia. When the Berks County District Attorney Task Force conducted investigations, many illegal Delta-8 and Delta-10 products were confiscated. Those included liquid vape cartridges with labels such as Pineapple Express Delta 8 and Shatter, and gummy candy with labels such as Code Red Delta 8, Blueberry Pie and Blue Raz Twisted X, all containing THC, the psychoactive compound in marijuana.

There is a lot of confusing information out there in regard to Delta-8, Delta-9 and Delta-10 products. One must have a chemistry degree to understand the differences in these products and there is an abundance of mislabeling that was uncovered during our investigations into products which were for sale and are still for sale in our smoke shops and mini markets throughout Berks County. Yet despite our efforts to enforce our laws, we have been met with confusion and push back from many in determining the legality of these products. What we have discovered is that products which contained things like CBD, Delta-8, 9, and 10 are readily available in our stores, yet many of these products are illegal.

There is also confusion between federal law and state law. In the cases of AK Futures LLC v. Boyd Street Distro LLC, 2022 West Law 1574222, the court held that the Delta-8 THC in AK Futures e-cigarette liquid appears to fit comfortably within the statutory definition of hemp and that the products are not illegal under federal law. The court held in this case that AK Futures Delta-8 THC products are lawful under the plain text of the Farm Act. Needless to say, this is contradictory to Pennsylvania law which states that Delta-8 THC is a Scheduled 1 Controlled Substance.

Delta-8 THC products federal legality appears to hinge on whether derived directly from hemp or converted from CBD. Determining what is legal and what is illegal is a chemist nightmare and for the average drug investigator is complicated.

Schools in my county, Berks County, continue to battle the problem of vaping. Vapes are generally illegal to possess and it is illegal to vape in schools. It is illegal for a minor to possess a vape which contains Delta-8 or Delta-10. Many of our school districts have installed vape detectors in their bathrooms to deal with this problem. Determining whether the vapes are legal or illegal is a very big problem for school districts, police departments and others. If the vape contains less than 0.3% of THC the vape is considered to be legal as if it is hemp. As a result, I have instructed school districts and police to charge juveniles and adults with a summary offense pursuant to 18 Pa. §6306.1 which makes illegal any electronic device that delivers nicotine or another substance to a person inhaling from the device including but not limited to electronic nicotine delivery systems, electronic cigarettes, pipe or hookah. An electronic cigarette is defined as an electronic device that delivers nicotine or other substance through vaporization and inhalation. One of the main reasons that we charge pursuant to 18 Pa. §6306.1 is to avoid having to test the vape which would not be fiscally appropriate for an ungraded misdemeanor or summary offense and would backup our laboratory resources.

Delta-8 can be purchased online. It is being rampantly advertised and sold over the internet with little if any regulation or controls. It is also being actively advertised for sale in smoke shops throughout Berks County. Recently my narcotics detectives, acting in an undercover capacity, purchased products advertised as Delta-8. We submitted those products to the Pennsylvania State Police laboratory for testing. The results for one vaping device contained Delta-8 and tetrahydrocannabinol, Delta-8 THC (Schedule 1). Delta-9 THC was also present but its concentration was not determined. Other items purchased included one gummy candy which also contained Delta-8 and tetrahydrocannabinol, Delta-8 THC (Schedule 1).

The Delta-8 products which we believe are Schedule 1 Controlled Substances are readily available throughout Pennsylvania. They are increasingly causing issues especially with teenagers and school districts are battling the vaping problem in our schools as set forth above.

Because of a lot of confusion in the law, very few counties have taken enforcement action. Berks County has taken enforcement action and it may be time for more enforcement to take place but it would help if the state would pass some specific statutes to address the confusion that has arisen with the Delta-8, 9 and 10 products and the related federal laws.

FDA NEWS RELEASE

FDA Issues Warning Letters to Companies Illegally Selling CBD and Delta-8 THC Products

Violations Include Marketing Unapproved New Drugs, Misbranding, Adding Delta-8 THC to Food Products

For Immediate Release:

May 04, 2022

Español ([/news-events/press-announcements/la-fda-emite-cartas-de-advertencia-companias-que-venden-illegalmente-productos-con-cbd-y-delta-8-thc](#))

Today, the U.S. Food and Drug Administration issued warning letters to five companies for selling products labeled as containing delta-8 tetrahydrocannabinol (delta-8 THC) in ways that violate the Federal Food, Drug, and Cosmetic Act (FD&C Act). This action is the first time the FDA has issued warning letters for products containing delta-8 THC. Delta-8 THC has psychoactive and intoxicating effects and may be dangerous to consumers. The FDA has received reports of adverse events experienced by patients who have consumed these products.

There are no FDA-approved drugs containing delta-8 THC. Any delta-8 THC product claiming to diagnose, cure, mitigate, treat, or prevent diseases is considered an unapproved new drug. The FDA has not evaluated whether these unapproved drug products are effective for the uses manufacturers claim, what an appropriate dose might be, how they could interact with FDA-approved drugs or other products, or whether they have dangerous side effects or other safety concerns.

~~Delta-8-THC is one of over 100 cannabinoids produced in the *Cannabis sativa* L. plant but is not found naturally in significant amounts. Concentrated amounts of delta-8-THC are typically manufactured from hemp-derived cannabidiol (CBD) and have psychoactive and intoxicating effects. Products containing delta-8-THC are available in varying forms, including but not limited to candy, cookies, breakfast cereal, chocolate, gummies, vape cartridges (carts), dabs, shatter, smokable hemp sprayed with delta-8-THC extract, distillate, tinctures, and infused beverages.~~

The warning letters address the illegal marketing of unapproved delta-8 THC products by companies as unapproved treatments for various medical conditions or for other therapeutic uses. The letters also cite violations related to drug misbranding (e.g., the products lack adequate directions for use) and the addition of delta-8 THC in foods, such as gummies, chocolate, caramels, chewing gum, and peanut brittle.

“The FDA is very concerned about the growing popularity of delta-8 THC products being sold online and in stores nationwide. These products often include claims that they treat or alleviate the side effects related to a wide variety of diseases or medical disorders, such as cancer, multiple sclerosis, chronic pain, nausea and anxiety,” said FDA Principal Deputy Commissioner Janet Woodcock, M.D. “It is extremely troubling that some of the food products are packaged and labeled in ways that may appeal to children. We will continue to safeguard Americans’ health and safety by monitoring the marketplace and taking action when companies illegally sell products that pose a risk to public health.”

The FDA recently published a [consumer update \(/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc\)](/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc) expressing serious concerns about the potential health effects of delta-8 THC products. The FDA has received adverse event reports involving products containing delta-8 THC from consumers, healthcare practitioners, and law enforcement, some of which resulted in the need for hospitalization or emergency room treatment. The agency is also aware of an increasing number of exposure cases involving products containing delta-8 THC received by national poison control centers and alerts issued by state poison control centers describing safety concerns and adverse events with products containing delta-8 THC.

In addition to the violations related to FDA-regulated products containing delta-8 THC, several of the warning letters outline additional violations of the FD&C Act, including marketing CBD products claiming to treat medical conditions in humans and animals, promoting CBD products as dietary supplements, and adding CBD to human and animal foods. CBD and delta-8 THC are unapproved food additives for use in any human or animal food product, as the FDA is not aware of any basis to conclude that the substances are generally recognized as safe (GRAS) or otherwise exempt from food additive requirements. One of the letters expresses concerns regarding CBD products marketed for food-producing animals, and the potential safety concerns related to human food products (e.g., meat, milk, eggs) from animals that consume CBD, as there is a lack of data on safe CBD residue levels.

The FDA issued warning letters to:

- [ATLRx Inc. \(/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/atlr-inc-618341-05042022\)](/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/atlr-inc-618341-05042022)
- [BioMD Plus LLC \(/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/biomed-plus-llc-618460-05042022\)](/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/biomed-plus-llc-618460-05042022)
- [Delta 8 Hemp \(/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/delta-8-hemp-618368-05042022\)](/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/delta-8-hemp-618368-05042022)
- [Kingdom Harvest LLC \(/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/kingdom-harvest-625058-05042022\)](/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/kingdom-harvest-625058-05042022)
- [M Six Labs Inc. \(/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/m-six-labs-inc-618701-05042022\)](/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/m-six-labs-inc-618701-05042022)