

From: [Powell, Jared \(ABRA\)](#)
To: [Air Quality Regulations \(DOEE\)](#)
Subject: Nuisance Odor Requirements Comments
Date: Monday, January 31, 2022 4:37:06 PM

I hope this email finds the DOEE team well.

In lieu of formal comments, we wanted to pass along some questions and comments from ABRA staff regarding the proposed nuisance odor rulemaking that we thought might be helpful in its crafting. We are happy to connect for further discussion as needed.

Thanks.

Section 903.1 - How does DOEE define injurious to the public health or welfare and reasonable enjoyment of life and property? In the definition section, odor is defined as detectable by the human nose. Does DOEE have a standard for this and if so, can they confirm whether someone smells it and makes a determination? If that is the standard or practice, has it been upheld?

Section 903.2(a) - How does DOEE differentiate between cannabis odors coming from consumer use and cultivation center operations? Many of our cultivation centers and dispensaries are near clubs and residential housing. DOEE may have to prove that the facility is the cause because the presence of others nearby engaging in marijuana use would be a defense for the facility.

Section 903.2(b)(1) – Should DOEE make clear that the public understands that providing this much information isn't required to submit a complaint for odor under other regulations. Many people are still wary of the industry and do not want to be on the record as having filed a formal complaint, so perhaps an anonymous channel should be available. Has DOEE considered that the three complaint rule raises fairness/due process concerns. DOEE might consider what ABRA has in place for Security Plans (i.e. DOEE would have the discretion to impose a plan when it's in the public interest/detect odor). Also, perhaps if one person detects unreasonable odor that should be enough.

Section 903.2(b)(2) - The District's noise rules have specific noise meter calibration requirements. Is there something similar in DOEE's regulations elsewhere for identifying and ascertaining odor? Or again, is it just a human nose standard based on the definition of odor.

Section 903.3 – Add the following language to the end of (a) following “and any other marijuana cultivation, processing, or dispensing operation licensed under District law “**or not**”. Additionally, perhaps DOEE should consider a new subsection and make cannabis odors a per se nuisance if coming from an unlicensed facility, and give authority to the AG to bring a nuisance suit similar to § 25-805.

Section 903.5(c)(2) – Perhaps the DOEE should consider a new subsection that permits cannabis operators to plead financial hardship and request a waiver from the engineering standard so long as they are able to prevent the emission of odor from the property.

Section 903.5(d) – who is responsible for regulating the timeline for implementation of odor mitigation following approval of the OCP?

Section 903.7(b) – Perhaps allow the offending operator 60 days to come into compliance if no prior violations in the preceding three years before DOEE shuts them down. Complete shuttering of a cannabis facility will have significant ramifications on the supply chain.



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